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ระเบียบกระทรวงการคลังว่าด้วยการจัดซื้อจัดจ้างและ
การบริหารพัสดุภาครัฐ พ.ศ. 2560

**Regulation of the Ministry of Finance on Public Procurement and
Supplies Administration B.E. 2560 (A.D. 2017)**

(Official Emblem)
Regulation of the Ministry of Finance
On Public Procurement and Supplies Administration
B.E. 2560 (A.D. 2017)

As deemed expedient to have a regulation on public procurement and supplies administration specifying criteria, procedures and guidelines for public procurement and supplies administration to be in line with the Act on Public Procurement and Supplies Administration Act B.E. 2560 (A.D. 2017).

By virtue of the provisions of Section 5 paragraph one, Section 11 paragraph two, Section 12 paragraph two, Section 15, Section 25 paragraph four, Section 43 paragraph three, Section 56 paragraph four, Section 57, Section 58 paragraph two, Section 59 paragraph two, Section 60 paragraph two, Section 61 paragraph two, Section 62 paragraph three and paragraph four, Section 65 paragraph three and paragraph six, Section 67 paragraph one (2), Section 68, Section 70 paragraph three, Section 71, Section 72, Section 74 paragraph two, Section 76 paragraph two, Section 77, Section 78, Section 84, Section 85, Section 86, Section 88, Section 89 paragraph two, Section 91, Section 92, Section 99, Section 100 paragraph two, Section 101 paragraph two, Section 102 paragraph two, Section 103 paragraph one (4) and paragraph three, Section 105, Section 106 paragraph four, Section 108, Section 109 paragraph four, Section 110 paragraph one (3) and paragraph two, and Section 113 of the Act on Public Procurement and Supplies Administration, B.E. 2560 (A.D. 2017), the Minister of Finance prescribes a regulation as follows:

Clause 1. This regulation shall be referred to as the “Regulation of the Ministry of Finance on Public Procurement and Supplies Administration, B.E. 2560 (A.D. 2017).

Clause 2. This regulation shall come into force immediately following the day of its promulgation in the Government Gazette.

Clause 3. Prescribing that the Minister of Finance shall be responsible for the execution of this Regulation.

Chapter 1
General Provisions

Part 1
Definitions

Clause 4. In this Regulation,
“head of government agency” means any person holding the following positions in a government agency:

(1) central government means Director-General, or head of official service that is called by other names and is in the capacity as a juristic person;

- (2) provincial government means provincial governor;
- (3) local government means chief executive of provincial administrative organization, mayor, chief executive of district administrative organization, governor of Bangkok metropolitan administration, Pattaya city mayor, or persons holding other equivalent positions called by other names;
- (4) State enterprises mean governor, director, managing director or persons holding equivalent positions called by other names;
- (5) Public organization means director, or persons holding equivalent positions called by other names;
- (6) independent organizations mean the Secretary-General of the Election Commission, Secretary-General of the Office of Ombudsman Thailand, Secretary-General of the National Counter Corruption Commission, ombudsman, Secretary-General of the National Human Rights Commission;
- (7) constitutional organization means Prosecutor-General;
- (8) clerical unit of the Court means Secretary-General of the Office of Court of Justice, Secretary-General of the Office of the Administrative Court, Secretary-General of the Office of the Constitutional Court;
- (9) public university means Director-General;
- (10) parliamentary organization or organization under the monitoring of the parliament means the Secretary-General of the Senate, Secretary-General of the House of Representatives, Secretary-General of the King Prajadhipok's Institute, Secretary-General of the Office of Political Development Council;
- (11) public independent organization means Secretary-General or persons holding equivalent positions called by other names;
- (12) other organizations as prescribed in the Ministerial Regulations mean the chief executive of organizations according to the laws for establishment of such organizations;

“head officer” means any person holding a position as head of the field associated with public procurement or supplies administration as prescribed by the laws on individual management of public organization, or persons entrusted by the head of public organization as the head officer;

“person having mutual interest” means ordinary persons or juristic persons tendering quotation or proposal for any procurement of a State agency that have interest, either directly or indirectly, with a business of natural persons or juristic persons tendering proposals to the same State agency for the same procurement.

Having interest, either directly or indirectly, with such natural persons or juristic persons are the way such natural persons or juristic persons are in the following relationships:

- (1) in a management relationship by manager, management partner, managing director, executive or persons competent to conduct businesses of a natural person or a juristic person having power or being able to exercise power in managing businesses for another or other natural persons or juristic persons participating in tendering quotations or proposals to such State agency for the same procurement;

(2) in a capital relationship by partner of general partnership, or general partner in partnership, or major shareholder in limited company or public company limited, partner in general partnership or limited partnership, or another or other major partners in limited company or public company limited tendering quotations or proposals to a State agency for the same procurement;

“major shareholder” means any shareholder holding more than 25 percent of shares of such business or other amount as seen appropriate by the person in charge of this Regulation for the size of businesses;

(3) in a crossing relationship between (1) and (2) by manager, managing partner, managing director, executive or person competent to conduct businesses of natural persons or juristic persons in general partnership or limited partnership or the major partnership in limited company or public company limited, either one or more, tendering quotations or proposals to a State agency for the same procurement, or on the other hand.

Holding a position, being a partner or entering into such shares for spouses or children that have not yet become sui juris of persons under (1), (2), or (3) shall be deemed as holding a position, being a partner or entering into shares of such person.

In the case where a person uses another person’s name as manager, managing partner, managing director, executive, partner or shareholder while he himself or she herself is actually the one who exercises the management power, or being the true partner or shareholder of the partnership or limited company or public company limited, as the case may be, and such relevant partnership or limited company or company public company has tendered prices or proposals to such State agency for the same procurement, it shall be deemed that the tenderers are in a relationship under (1), (2), or (3), as the case may be;

“impeding fair competition” means one or several tenderers have committed an action that is to impede or obstruct or limit opportunity for fair competition in tendering prices or proposals to State agencies, no matters it is in agreement, or by giving, requesting, or accepting to offer, calling for, accepting, or agreeing to receive the money, or properties or other benefits or committing an act of violence or threatening to commit an act of violence or submitting inaccurate documents or implying to commit any dishonesty in bidding with purposes to seek for benefits among the tenderers or to provide benefits for any of the tenderers to be eligible for entering into agreement with such State agency, or to avoid fair competition, or to put the State agency at disadvantage which is not a usual business operation;

“person with duty to review qualifications” means the committee to consider electronic tendering results under Clause 55, the committee to consider price tenders under Clause 70, the committee for procurement under the selection procedures under Clause 74, the committee in charge of consultancy work by the general solicitation notification method under Clause 114, the committee in charge of consultancy work by the selection method under Clause 123, the committee in charge of design and consultancy supervision work by the general solicitation notification method under Clause 146, the committee in charge of design and construction supervision work by the selection method under Clause 149, and the committee in charge of the design and construction supervision work by the method of design competition under Clause 155.

“Electronic Catalog (e-catalog)” means specifications of goods that operators have registered in the Electronic Government Procurement (e-GP) of the Comptroller-General’s Department by presenting the goods’ specification, images and description as prescribed by the Comptroller-General’s Department and shall include the services or employment of which the types are as prescribed by the Comptroller-General’s Department.

Part 2

Having Interest in Topics Discussed in the Meeting

Clause 5. In the case where there is a reasonable doubt that the President or the committee of the Policy Committee, Ruling Committee, Focal Price Committee, A.C.C. Committee and Appeals Committee have interests, either directly or indirectly, in any topic proposed to the meeting, such doubt shall be considered based on the criteria prescribed in the Act on Administrative Procedures.

Part 3

Competent Persons and Authorization

Clause 6. Persons competent to carry out acts under this Regulation are persons holding a position of the head of a State agency, with an exception of the Ministry of Defense or other State agencies that the person in charge of this Regulation specifies that such State agency may prescribe which level of agency, commander, position shall have power to carry out acts under this Regulation and such prescription shall be informed to the person in charge of this Regulation and the State Audit Office of the Kingdom of Thailand.

Clause 7. Person competent to carry out acts under Clause 6, or any person competent to procure under this Regulation shall authorize, in writing, any person holding any position within the State agency by concerning the level of position, duties and responsibilities of the authorized person.

When there is authorization under Paragraph One, the substitute shall have duty to accept such authorization and shall not be able to transfer such authority to a person holding other positions, with an exception as follows:

(1) for authorization to a provincial governor, such provincial governor may transfer such authorize in the following cases:

(a) in the case of authorizing such power to deputy provincial governor, assistant to provincial governor, provincial permanent secretary, or head of provincial official sector, the provincial governor shall inform the initial authorizer;

(b) in the case of authorizing such power to other persons, apart from persons under (a), it shall be carried out only with prior approval from the initial authorizer.

(2) the authorization and sub-authorization according to regulations or orders of the Ministry of Defense or of other State agencies prescribed by the Ministry under Clause 6.

In the case where there is a law particularly prescribing of authorization and sub-authorization, the action shall be done according to such law.

For the purpose of flexibility in procurement, the head of State agency shall authorize the ordering power and procurement operation to persons holding lower positions.

Prescribing that the authorizer shall submit a duplicate of authorization documents to inform the State Audit Office of the Kingdom of Thailand every time.

Clause 8. In the case of necessity for the overall benefits of the public sector, it is permissible for any State agency to authorize other State agencies to conduct procurement on behalf. In such case, the authorizer shall submit a duplicate of authorization documents to inform the State Audit Office of the Kingdom of Thailand.

Part 4

Operations through Electronic Method

Clause 9. In conducting procurement and supplies administration according to this Regulation through the electronic method, it prescribes that the State agency shall procure through the information network systems of the General-Comptroller's Department through the Electronic Government Procurement (e-GP) according to the procedures prescribed by the General-Comptroller's Department.

Prescribing that State agencies shall use documents printed from the electronic public procurement system as supporting documents in conducting procurement according to the procedures prescribed in this Regulation.

Clause 10. Prescribing that the General-Comptroller's Department shall provide guidelines for public procurement through electronic system in order for State agencies and operators to use as guidelines for the operation.

Part 5

Provision of Procurement Plans

Clause 11. When a relevant agency or an agency competent to consider cost estimation approves price estimation for procurement for a State agency, it prescribes that an officer or any person entrusted to perform such duties shall provide an annual procurement plan and propose it to the head of State agency for approval.

The annual procurement plan shall at least consist of the followings:

- (1) Name of the procurement project;
- (2) Cost estimation for procurement;
- (3) Expected duration opening for procurement;
- (4) Other lists as specified by the Comptroller-General's Department.

When the head of State agency grants an approval for the annual procurement plan under Paragraph One, the head of State agency shall publish such plan on information network systems of the Comptroller-General's Department and of such State agency according to the procedures prescribed by the Comptroller-General's Department and shall cause the same to be posted openly at the posture place of such State agency, with an exception of the case under Section 11 paragraph one.

An annual procurement plan for any project that is not announced on information network systems of the Comptroller-General's Department by a State agency, the procurement of such project shall not be conducted.

Clause 12. Subsequent to the dissemination of the annual procurement plan under Clause 11, it prescribes that the State agency shall proceed the procurement process without delay in order to be in line with the plan and procedures under Chapter 2, Chapter 3, or Chapter 4 of this Regulation, as the case may be, and to be ready for a settlement of contracts or agreements immediately after being approved from the accounting department.

Clause 13. In the case where it is necessary to amend the annual procurement plan, it prescribes that the officer or person entrusted to carry out such business shall provide a report as well as reasons for the request of such amendment and propose to the head of State agency for approval. When the approval is granted, Clause 11 paragraph three shall be executed.

Part 6

Inspection of Persons having Mutual Benefits

Clause 14. In order to establish a fair competition, it prescribes that the person having duties to review qualifications shall review mutual benefits among tenderers. If it turns out that certain tenderers have mutual benefits with another, the person having duties to review qualifications shall remove such tenderers' names from the list of tenderers.

Clause 15. In reviewing qualifications of each tenderer under Clause 14, the officer shall specify that each tenderer must separately submit documents clarifying qualifications at least with the following documents:

- (1) In the case where the tenderer is a juristic person:
 - (a) General partnership or limited partnership shall submit a certified copy of juristic person registration certificate, list of managing partners, person possessing controlling power (if any);

(b) The limited company or public company limited shall submit certified copies of juristic person registration certificate, articles of association, list of board of directors, authorized persons to control (if any), and list of major shareholders (if any);

(2) In the case where the tenderer is a natural person or a group of persons which is not a juristic person, certified copies of identification card, partnership agreement (if any), identification card of the partners shall be submitted;

(3) In the case where the tenderer is a joint tenderer in the capacity as partner, copies of partnership contract, identification card of partner; and in the case that any party of the partners is a natural person that does not hold Thai citizen, a copy of passport shall be submitted; or if any party is a juristic person, the documents specified under (1) shall be submitted;

(4) Other documents prescribed by the State agency, such as copies of commercial certificate, withholding tax certificate.

In submitting document clarifying qualifications under paragraph one, all the documents shall be submitted altogether with the proposal according to the procedures prescribed in this Regulation.

Part 7

Provision of Consideration Result Reports

Clause 16. When the procedure process of each project comes to an end, State agencies shall provide a report of consideration results, procedure details and steps of procurement altogether with supporting documents as follows:

(1) Purchase requisition report under Chapter 2 Part 2, Chapter 3 Part 2, and Chapter 4 Part 2, as the case may be;

(2) Documents related to opinions on drafting of work scope or specifications of supplies to be purchased or procured and the results of such consideration (if any);

(3) Solicitation notifications and documents, or invitation letter, or other relevant documents;

(4) Proposals of all tenderers;

(5) Record of consideration result report;

(6) Announcement of successful tenderers or selected tenderers for the procurement;

(7) Contracts or agreement in writing, including the amendment of contracts or agreements in writing (if any);

(8) Supplies inspection reports.

Procurement of any project shall have documentary evidence that is in line with such procurement. For the procurement that has been carried out through the electronic public procurement system, the State agency shall be able to use documents provided on the electronic public procurement as supporting documents for the report of consideration results under paragraph one.

Chapter 2
Procurement

Part 1
General Provisions

Clause 17. Acts under this Chapter shall not be applied to consultancy work and design or construction supervision work.

Clause 18. In the case where there is procurement to provide supplies by itself, the head of State agency shall appoint a supervisor to be responsible for such provision and appoint performance inspection committee of which the qualifications and duties are the same as those of the inspection committee for acceptance, with an exception that the State agency has already determined responsible persons in particular.

Clause 19. Any State official wishes to conduct procurement for other state agencies, criteria, procedures and details for purchasing or employment operation shall be defined and at least shall consist of types or categories of supplies that such state agency wish for procurement, procurement procedures, and enter into contracts or agreements in writing and purpose to the policy committee for approval. When the approval is granted, it prescribes that the State agency shall carry out the act according to the procedures specified.

In the case where it is expedient, the policy committee may announce to prescribe criteria, procedures, and details for procurement under paragraph one for execution of State agencies.

Clause 20. Procurement by decreasing cost estimation for procurement at the same time in order to amend the procurement procedures or authority for procurement cannot be performed.

In the case where it is procurement by decreasing the cost estimation, the objectives and worthiness of such procurement shall be mainly taken into consideration.

Part 2
Procurement Process

Providing of drafts of work scope or particular specifications of supplies or the construction plan.

Clause 21. For procurement that is not for construction work, it prescribes that the head of State agency shall appoint a set of committees, or entrust an officer or any person to be responsible for providing work scope draft or particular specifications of supplies to be procured as well as defining criteria for proposal selection.

In order to make the and In order for the definition of particular specifications of supplies to be procured to be at the standards and beneficial to the official service, if the supplies to be purchased or employed already have announcement of industrial product standards, the particular specifications of the supplies to be purchased or employ or lists of the construction shall be specified in accordance with the Industrial product standard, or the list of construction according to the industrial product standards, or for convenience, only the standard numbers may be indicated. In the case that the supplies to be purchased or employed do not have an announcement to define industrial product standard, but there is a person registering such product with the Ministry of Industry, it prescribes that specification of supplies to be purchased or employed shall be identified in the list of construction to be in line with the specifications as specified in the purchaser manual or inserted purchaser manual provided by the Ministry of Industry.

In contracting for construction, head of the State agency shall appoint a set of committees or entrust an officer or any person to provide a construction plan or proceed for contracting according to the provisions under Chapter 4 Design or Construction Work Supervision.

Components, consideration period, and committee meetings under paragraph one and paragraph two shall be as prescribed by the head of State agency as seen necessary and expedient.

Procurement Reports

Clause 22. For each procurement method, apart from purchasing a land or construction under Clause 23 and Clause 79 paragraph two, the officer shall provide a procurement report and propose to the head of State agency for approval through the head officer according to the following lists:

- (1) Reasons and necessity for procurement;
- (2) Scope of work or specifications of supplies or construction plans to be procured, as the case may be;
- (3) Focal price for the supplies to be procured;
- (4) Procurement price estimation. The budget shall be indicated. In the case where there is no such indicated budget, cost estimation can be set for such procurement;
- (5) Duration for procurement;
- (6) Selection method for consultancy work;
- (7) Criteria for selection of proposal;
- (8) Other proposals, such as request for approval of committee appointment necessary for consultancy work, issuance of solicitation notifications and documents for consultancy work.

For urgent case of procurement due to unexpected situations under Section 56 paragraph one (1) (c), or in the case where it is necessary to use such supply for emergency case under Section 56 paragraph one (2) (d), or in the case where the procurement involves such as small cost estimate according to the provisions prescribed in the Ministerial Regulations issued in pursuance of Section 96 paragraph two of which the details cannot be made into a normal report, the officer or person responsible for such matter shall provide reports under paragraph one indicating only the lists that are necessary.

Clause 23. In purchasing a land or construction, the officer shall provide a report and propose to the head of State agencies through the head officer with the following lists:

- (1) Reasons and necessity for the purchase;
- (2) Details of the land or construction to be purchased as well as the size of area required and location;
- (3) Price estimated by the local administrative organization;
- (4) Approximately three purchase and sale prices of the land or construction set close to the area to be purchased;
- (5) Procurement price estimation. The budget shall be indicated. In the case where there is no such indicated budget, a cost estimation can be set for such procurement;
- (6) Purchasing method and reasons for using such purchasing methods;
- (7) Other proposals, such as request for approval of committee appointment necessary for purchase;

Clause 24. When the head of State agency approves the report proposed under Clause 22 or Clause 23, the officer shall conduct further process.

Procurement Committee

Clause 25. For each procurement, the head of State agency shall appoint procurement committee to execute this Regulation and specify consideration period for the committee, as the case may be, as follows:

- (1) Committee in charge of electronic bidding consideration;
- (2) Committee in charge of price tenders;
- (3) Committee in charge of procurement by the selection method;
- (4) Committee in charge of procurement by the specific method;
- (5) Inspection committee for acceptance.

Prescribing that each procurement committee shall report consideration results to the head of State agency within the specified time. If there is a circumstance that delays the process, such matter shall be proposed to the head of State agency to consider for an extension of the period as seen necessary.

Clause 26. Each procurement committee under Clause 25 consists of 1 President and at least 2 committee members appointed from government official, permanent employees, government officers, university employee, State employees, or employee of State agencies called by other names by concerning duties and responsibilities of such appointed persons.

In the case where it is necessary or for the benefits, State agencies may appoint other persons as committee members, but the number of committee members seated by other persons must not exceed that of the committee under paragraph one.

In supply purchase or employment at the same time, the committee who is a member of committee in charge of electronic bidding consideration, committee in charge of price tenders, or committee in charge of procurement by the selection method shall be appointed as inspection committee for acceptance.

All procurement committees should appoint specialists or qualified persons specializing in such procurement as committee members.

Clause 27. The meeting of each committee shall have committee attending not less than half of the total number of the committee. It prescribes that the President and each committee member shall have one vote. The President must be present every time the meeting is held. If the president cannot perform duties, the head of State agency shall appoint a new President to preside over the meeting.

Resolution of the committee shall be based on majority votes. If the vote is tied, the President shall have one casting vote, with an exception for the case where inspection committee for acceptance determines to consider the unanimous vote.

Any committee member does not agree with the resolution of the committee shall provide opposition reports.

The President and committee shall not have interests with tenderers or contractors for such procurement. In this regard, having interests in topics being considered in the meeting shall be in accordance with the laws on Administrative Procedures.

If the President or the committee notices that he or she has interests with tenderers or contractors for such procurement, the President or the committee shall leave the position of such President or committee members of the committee that he or she is appointed to, and shall report the head of State agency for further command as deemed expedient.

Procurement Methods

Clause 28. Procurement can be conducted by 3 methods as follows:

- (1) General solicitation notification method;
- (2) Selection method;
- (3) Specific method.

General Solicitation Notification Method

Clause 29. Procurement by the general solicitation notification method can be conducted by 3 methods as follows:

- (1) Electronic market;
- (2) Electronic bidding;
- (3) Request for quotations.

Clause 30. The e-market method is a procurement for supplies with non-complex specifications or for goods or service based on standards and prescribe in the e-catalog. The Electronic Market (e-market) shall be conducted according to the procedures prescribed by the Comptroller-General's Department, which can be done in 2 ways as follows:

- (1) Price proposal by quotations means a procurement with cost estimate exceeding 500,000 Thai baht, but not exceeding 5,000,000 baht;

(2) Price proposal by electronic bidding (e-bidding) means a procurement with cost estimate exceeding 5,000,000 baht.

Clause 31. E-bidding is a procurement of which the cost estimate exceeds 500,000 baht, and is a procurement for goods or services of which specifications are not indicated in the e-catalog. The e-bidding shall be conducted according to the procedures prescribed by the Comptroller-General's Department.

Clause 32. Price quotation means a procurement of which the cost estimate exceeds 500,000 baht, but not exceeding 5,000,000 baht. The quotation method shall be held in the case where such state agency is situated in a location that has limited access to the internet and cannot conduct the bidding through the electronic markets or e-bidding system. The officer shall indicate reasons and necessities for not being able to conduct procurement through the e-market method or e-bidding method on the report for procurement under Clause 22.

Clause 33. Any State enterprise that is necessary to specify cost estimate for procurement under Clause 30, Clause 31, or Clause 32 differently from the provisions of this Regulation, the budget must be proposed to the Ruling Committee for approval and when the approval is granted, it must be reported to the State Audit Office of the Kingdom of Thailand.

Electronic Market Method

Clause 34. Prescribing that the officer shall provide documents for procurement through the electronic market method and publish solicitation notifications according to the procedures prescribed by the Policy Committee.

It is permissible, where necessary, to conclude any procurement documents and solicitation notifications with statements or particulars different from those in the procurement documents and solicitation notifications under paragraph one, provided that key substances thereof correspond to those provided in the contract form and do not place the State agency at disadvantage, except that where the head of State agency considers that there may be problems involving prejudicial effects or imprecision, it shall refer the procurement draft and announcement in question to the Office of the Attorney-General for prior consideration and approval.

The prescription of date, time of quotation in procurement documents and solicitation notifications under paragraph one shall be the following day of the last day of the publication period for such procurement documents and solicitation notifications by indicating a business day and operational time only, and time for the quotation shall be considered based on the time of the electronic public procurement as standards.

Clause 35. When the head of State agency approves the report for procurement under Clause 22, the head officer shall publish such documents and announcement on an information network system of the Comptroller-General's Department and that of the State agency and shall cause the same to be posted openly at the posture place of such State agency for at least 3 consecutive business days by concerning the period for consultants to prepare documents for the proposal.

Clause 36. Prescribing that the Comptroller-General's Department shall submit the procurement documents and solicitation notifications via the e-market method to the operators registering in the electronic public procurement system who have already uploaded specifications of supplies onto the supply system according to the procurement documents and solicitation notifications via the e-market method of the State agency and deliver such documents to the State Audit Office of the Kingdom of Thailand through the electronic system.

In the case where any operator has qualifications meeting the requirements in the procurement documents and solicitation notifications, but has not yet registered on the public procurement electronic system, such operator shall need to register on the electronic public procurement system and must upload specifications of supplies on the supply system prior to the price tenders.

Clause 37. When it is the day of e-market price tenders, the following acts shall be executed:

(1) In the case where it is a procurement under Clause 30 (1), the operator shall access to the e-market system and propose the price within the specified time. The quotation can be submitted only once.

(2) In the case where it is a procurement under Clause 30 (2), the operators shall access to the e-market system by registering within 15 minutes prior to the bidding process and undergo testing for 15 minutes and propose quotation within 30 minutes. The quotation can be submitted as many as preferred.

The date for bidding under paragraph one shall not be shortened or postponed, or changed, with an exception for the case where the Comptroller-General's Department postpones the date and time for bidding due to problems regarding the bidding through the electronic public procurement system. The Comptroller-General's Department shall inform the results of the operation to the Ruling Committee.

Clause 38. When the bidding period elapses under Clause 37, if it appears that there are many tenderers proposing the lowest price, it prescribes that the officer shall consider the first tenderer quoting the lowest price on the e-market system as the successful tenderer.

In the case where there is only one tenderer joining the bidding, if the quoted price is appropriate and beneficial to the State agency, the officer shall propose to the head of State agency through the head officer to consider the price quoted by such tenderer.

If there is no tenderer joining the bidding, the officer shall propose to the head of State agency through the head officer to consider cancelling such procurement and proceed for a new procurement through the new e-market system or proceed for a procurement by the selection method under Section 56 paragraph one (1) (a), or the specific method under Section 56 paragraph one (2) (a), as the case may be. This is excepting in the case where the State agency proceeds for a procurement by the selection or specific method with other reasons. In such case, the procurement process shall be conducted again by providing a report for procurement under Clause 22.

Clause 39. In the case where it appears that the price of the tenderer quoting the lowest price is higher than the cost estimate for procurement under Clause 22, the officer shall carry out the following acts:

(1) negotiate the price to be as low as possible with such tenderer through the e-market system. In the case where such tenderer agrees to reduce the price and submit a new quotation to the e-market system and the new price does not exceed the cost estimate for the procurement; or higher but not exceeding 20 percent of the cost estimate for the procurement; or the officer has negotiated but the tenderer does not agree to reduce the price and the exceeding amount is not higher than 10% of the cost estimate, if the price is appropriate, the process shall be proceeded with such tenderer;

(2) if the act carried out under (1) is not successful, the officer shall inform the tenderers who quote price correctly based on the conditions prescribed in the documents for procurement through the e-market method to quote the price again. The quotation must be proposed through the e-market system within the time specified by the State agency. If any of the tenderer does not resubmit the quotation, it shall be deemed that such tenderer confirms the price previously quoted. In the case where it appears that the tenderer quoting the lowest price in the new bidding round does not quote price higher than the cost estimate for procurement; or higher but the exceeding amount is not higher than ten percent of the cost estimate, if such price is appropriate, such tenderer shall be offered for the procurement.

(3) In the case where the act under (2) has been carried out, but the result is not effective, it prescribes that such matter must be proposed to the head of State agency through the head officer to cancel such procurement. The provisions of Clause 38 paragraph three shall be applied to the new procurement *mutatis mutandis*.

Clause 40. After having the successful tenderer of the price tenders under Clause 38, or Clause 39, the officer shall print out a copy of the quotation and tendering documents of such tenderer from the e-market system and affix his signature on each and every page thereof.

In the case where the price tendered by the tenderer under paragraph one does not align with the conditions prescribed in the procurement document for e-market or catalog methods, or specifications of supplies are not accurate based on the conditions determined in the procurement documents for the e-market method, it shall be deemed that such tenderer does not satisfy the determined conditions under the procurement documents for the e-market method. The official shall propose to the head of State agency through the head officer to cancel the procurement, or consider the tenderer who tendered the second lowest price to be the successful tenderer for such price tenders. In this regard, the appropriation and benefits of the State agency shall be taken into account.

Clause 41. Prescribing that the officer shall report the consideration results and opinions as well as submitting relating documents to the head of State agency through the head officer for approval.

Clause 42. When the head of State agency grants approval for the report of consideration results and the competent person approves the procurement, the head officer shall publish the name of the successful tenderer on information network systems of the Comptroller-General's Department and of such State agency according to the procedures

prescribed by the Comptroller-General's Department and shall cause the same to be posted openly at the posture place of such State agency, and inform all tenderers about the result via e-mail according to the format determined by the Comptroller-General's Department.

Electronic Price Tender

Clause 43. Prescribing that the officer shall provide procurement documents for electronic price tender and prepare solicitation notifications according to the format prescribed by the Policy Committee.

It is permissible, where necessary, to conclude any procurement document and solicitation notification with statements or particulars different from those in procurement documents and solicitation notifications under paragraph one, provided that key substances thereof correspond to those provided in the contract form and do not place the State agency at disadvantage, except that where the head of State agency considers that there may be problems involving prejudicial effects or imprecision, it shall refer the procurement draft and announcement in question to the Office of the Attorney-General for prior consideration and approval.

The determination of date and time for price tender in the procurement documents and solicitation notifications under paragraph one shall be the following day of the last day of the publication of announcement and procurement documents by indicating in working date and time. The time for price tenders shall be standardized by the time of the electronic public procurement.

Clause 44. Any procurement that is necessary by conditions of procurement shall determine conditions in the procurement documents by the electronic price tender method, stating that tenderers shall need to present samples of proposed supplies for testing, demonstrating, or pitching on the date and time as well as location prescribed by State agencies.

For any electronic price tender requiring to have documents in the part of key substances to support price proposals submitted through the electronic price tender system, if a State agency see that the documents are a large amount and are obstacles to such tenderer in uploading onto the electronic price tender system, such State agency shall allow the tenderers to submit hard copies of the documents, including summary of numbers of documents, to the office of State agencies later. In this case, the tenderers shall need to affix their signatures with company's seal (if any) to certify the documents.

The determination of date for the tenderers to submit samples of supplies for testing, demonstrating, or pitching under paragraph one, or provide documents or details under paragraph two, the State agency shall determine such day to be any day within the 5 working days following the day of the price tender. This is except that the action under paragraph one cannot be carried out within one day. In such case the State agency shall consider determining for more than 1 day, but such amount of days must not exceed 5 working days from the day of the price tender. In this regard, it shall be clearly indicated as conditions in the procurement documents of the electronic price tenders.

Clause 45. When there is a responsible person under Clause 21 providing a draft of scope of work or specifications of supplies for procurement, the officer shall provide procurement documents under Clause 22 and refer the draft of scope of work or specifications of supplies for procurement to the head of State agency for approval. If the head of State agency sees that, in order to be cautious, appropriate, beneficial to the State agency and does not have any condition that impedes the fair competition, there may be a discussion for the draft of scope of work or specifications of supplies for procurement and the draft notification and procurement documents by the electronic price tenders from the operators with the criteria as follows:

(1) If the cost estimate for the procurement is higher than 500,000 baht, but not exceeds 5,000,000 baht, it shall be at discretion of State agency to publish or not publish procurement documents for feedback from the operators;

(2) If the cost estimate for the procurement is higher than 5,000,000 baht, it prescribes that the State agency shall publicize the drafts of announcement and procurement documents via electronic price tenders for feedback from the operators.

Any State enterprise require determining the price estimation under paragraph one differently from the price determined in this regulation, it must refer such matter to the Ruling Committee for approval. When the approval is granted, such matter must be reported to the State Audit Office of the Kingdom of Thailand.

Clause 46. In the case where the State agency publicizes drafts of the announcement and procurement documents through the electronic price tenders for feedback from the operators under Clause 45, the head officer shall proceed for publishing such documents on information network systems of the Comptroller-General's Department and those of State agency for at least 3 consecutive days for operators to submit feedback to the State agency conducting the procurement directly with identity indicated.

Clause 47. In the case where there is a person submitting feedback, the head officer altogether with the responsible persons shall provide drafts of scope of work or specifications of supplies for procurement according to Clause 21 and consider whether it should be amended and improved or not by carrying out the following acts:

(1) After consideration, if it turns out that drafts of notifications or documents for procurement by the electronic price tender method should be improved, the head officer shall provide a report together with opinions and improved drafts of notifications or documents for procurement by the electronic price tender method and propose to the head of State agency for approval. When the approval is granted, the officer shall publish such drafts of notifications or documents for procurement by the price tender method on information network systems of the Comptroller-General's Department and those of State agency for at least 3 consecutive business days and the head officer shall inform all feedback providers in writing.

(2) After consideration, if it turns out that drafts of notifications or documents for procurement by the electronic price tender method should not be improved, the head officer shall provide a report together with opinions and propose to the head of State agency for approval. When the approval is granted, the head officer shall inform all the feedback providers in writing.

Clause 48. Subsequent to the execution of Clause 45 or Clause 46 and Clause 47, as the case may be, the head officer shall publish notifications or documents for procurement by the electronic price tender on information network systems of the Comptroller-General's Department and those of State agency within the specified period.

Clause 49. Distribution or sales of documents for electronic price tenders, including document indicating particular specifications or specifications of supplies, shall be carried out at the same time as the publication of notifications and documents for electronic price tenders in order for operators who are desirous to submit proposals to be able to request or buy such documents from the first day until the last day of the publication.

In the case where there is a selling, it prescribes that the price must be determined appropriately to the expenses that such State government has paid for such documents, but not include other expenses arising and the State agency has paid by using its budget to operate such business, such as expense for the design exploration or consultancy work.

If there is a cancellation of the electronic price tender and there is a new electronic price tender, the receiver or purchaser of the documents for the electronic price tenders shall be eligible for the documents for the new electronic price tender without further expenses.

Clause 50. Prescribing that the Comptroller-General's Department shall refer the notifications and procurement documents for electronic price tenders of the State agency to the State Audit Office of the Kingdom of Thailand through the electronic method.

Clause 51. The publication of announcement and procurement documents of the electronic price tenders under Clause 48 shall concern the period that allows operators to prepare for documents to submit for the price tenders with conditions as follows:

- (1) if the cost estimation for a procurement is higher than 500,000 baht, but not exceed 5,000,000 baht, the period must not be shorter than 5 working days;
- (2) if the cost estimation for a procurement is higher than 5,000,000 baht, but not exceed 10,000,000 baht, the period must not be shorter than 10 working days;
- (3) if the cost estimation for a procurement is higher than 10,000,000 baht, but not exceed 50,000,000 baht, the period must not be shorter than 12 working days;
- (4) if the cost estimation for a procurement is higher than 50,000,000 baht, the period must not be shorter than 20 working days;

Any State enterprise require to determine cost estimation and period for the publication under paragraph one differently from the one prescribed in this regulation shall refer such matter to the Ruling Committee for approval. When the approval is granted, such matter must be informed to the State Audit Office of the Kingdom of Thailand.

Clause 52. In the case where by the conditions of a procurement requires further details for clarity, it shall be at the discretion of the head of State agency to allow any operator requiring more details to submit questions to e-mails of State agency or other channels determined by the Comptroller-General's Department with appropriate period of time. The State agency shall publish such details on information network systems of the Comptroller-General's Department and those of State agency at least 3 business days prior to the price tendering day.

Clause 53. For any publication of notifications and documents for electronic price tender, if the State agency has determined the details of notifications or documents for electronic tenders or scopes of work or specifications of supplies inaccurately or incompletely in terms of essential contents, either in part or whole, the State agency shall cancel the procurement and proceed a new procurement with accurate details.

Clause 54. When it comes to the date for electronic price tender, it prescribes that operators shall access to the electronic price tender system and tender price within the time specified. The price can be tendered only once.

The determination of price tendering date under Paragraph one cannot be shortened or postponed, or changed, with an exception for the case where the Comptroller-General's Department informs to postpone the date, time for price tenders due to errors in tendering price through the electronic public procurement. The Comptroller-General's Department shall inform the results to the Ruling Committee.

Clause 55. When the period of price tenders elapses under Clause 45, it prescribes that the committee in charge of price tenders shall carry out the following acts:

(1) Printing a copy of quotation and price tendering documents of all tenderers from the electronic price tender system. Each committee member shall affix his or her signature on the quotation and documents of price tenders.

In this regard, if the procurement requires specification that concern technologies of supplies or qualifications of the tenderer, which may have proposals that are not on the same base, resulting in problems in the proposal selection, it prescribes that the State agency shall determine conditions to submit technical proposal or other proposal separately. In such case, the committee shall not have to print out the quotation until the act under Clause 83 (3) is completed.

(2) Inspecting of mutual benefits and documents for price tenders and samples of supplies (if any) or considering all the presentations of all the tenderers or documents that are required to submit after the price tendering day under Clause 44 and selecting tenderers that does not have mutual benefits and submits complete and correct documents with qualifications and technical proposal or supplies meeting the requirements according to the conditions prescribed in the notifications and documents for the electronic price tenders.

In this proceeding, the committee may inquire into additional fact from any tenderer, but shall not let any tenderer change the essential contents already posted. If the committee sees that qualifications of any tenderer do not meet the requirements stated in the conditions that the State agency has determined in the notifications and documents for electronic price tenders, it prescribes that the committee shall remove the names of such tenderers from the price tenders.

In the case where any tenderer incompletely provides technical documents or specification of supplies for procurement, or provides details that are different from the conditions determined by the State agency in the notifications and documents for electronic price tenders, in the part that is not material and the differences do not have any advantage to other tenderers or is just a slight mistake, the remove of right shall be compromised.

(3) Consider selecting supplies or qualifications of the tenderer that correctly in line with (2) and consider for selection of the quotation under the criteria prescribed in the announcement and documents for electronic price tenders. Not more than 3 tenderers proposed the lowest prices, or the highest scores shall be ranked.

In the case where the selected tenderer does not settle into contract or agreement with the State agency within the time specified in the documents for the electronic price tenders, the Committee shall consider the tenderer proposing the second lowest price or the tenderer obtaining the second highest total scores, as the case may be;

(4) Providing reports of consideration results and opinions altogether with all the accepted documents and proposing to the head of the State agency through the head officer to consider for approval. In this regard, the report of the consideration results shall consist of, at least, the followings:

- (a) List of supplies to be procured;
- (b) Names of the tenderer, quoted prices and proposals of all tenderers;
- (c) Names of the tenderers that do not have mutual benefits with others;
- (d) Selection criteria of proposal and scoring standards;
- (e) Result of the selection, suggestions and scoring for proposal of all the tenderers, altogether with the supportive reasons for the consideration.

Clause 56. In the case where it appears that there is only one tenderer, or there are several tenderers but only one tenderer fulfills the requirements, the committee in charge of electronic price tender shall propose to the head of State agency through the head officer to dismiss such electronic price tender. However, if the committee considers and sees that there is a reasonable cause to continue the process without dismissing the electronic price tender, the committee shall carry out the act under Clause 57 or Clause 58, as the case may be, *mutatis mutandis*.

In the case where there is no tenderers tendering proposals, or the proposals tendered are not selected, the committee shall propose to the head of State agency through the head officer to consider dismissing such electric price tender. However, if the head of State agency considers and sees that a new electronic price tender may not be effective, he or she may order to proceed for a new procurement by using the selection method under Section 56 paragraph one (1) (a) or the specific method under Section 56 paragraph one (2) (a), as the case may be. This is except for the case where the State agency has proceeded for the specific method by other reasons. In such case, the new procurement shall be conducted by providing procurement report under Clause 22.

Clause 57. In considering the results for electronic price tenders, in the case where price criteria have been adopted, if it turns out that there are several tenderers tendering the same lowest price, the Committee shall consider the first tenderer proposing the lowest price to be the successful tenderer.

In the case where it appears that the successful tenderer of the price tenders is higher than the cost estimate for procurement under Clause 22, the committee shall carry out the following acts:

(1) negotiate the price to be as low as possible with such tenderer through the electronic price tender system. In the case where such tenderer agrees to reduce the price and submit a new quotation to the electronic price tender system and the new price does not exceed the cost estimate for the procurement; or higher but not exceeding ten percent of the cost estimate for the procurement; or the officer has negotiated but the tenderer does not agree to reduce the price and the exceeding amount is not higher than ten percent of the cost estimate, if the price is appropriate, the process shall be proceeded with such tenderer;

(2) if the act carried out under (1) is not successful, the officer shall inform the tenderers who quote price correctly based on the conditions prescribed in the documents for procurement through the electronic price tender system to quote the price again. The quotation must be proposed through the electronic price tender system within the time specified by the State agency. If any of the tenderer does not resubmit the quotation, it shall be deemed that such tenderer confirms the price previously quoted. In the case where it appears that the tenderer quoting the lowest price in the new bidding round does not quote price higher than the cost estimate for procurement; or higher but the exceeding amount is not higher than ten percent of the cost estimate, if such price is appropriate, such tenderer shall be offered for the procurement.

(3) if the act carried out under (2) is not successful, the officer shall propose opinions to the head of State agency through the head officer to support the consideration whether to dismiss or proceed with the procurement, or request for higher cost estimate, reduce work lists, number of works, or scope of work. However, if such actions cause disadvantages among the tenderers, the procurement shall be dismissed. If the head of State agency considers and sees that a new electronic price tender may not be effective, he or she may order to proceed for a new procurement by using the selection method under Section 56 paragraph one (1) (a) or the specific method under Section 56 paragraph one (2) (a), as the case may be. This is except for the case where the State agency has proceeded for the specific method by other reasons. In such case, the new procurement shall be conducted by providing procurement report under Clause 22.

Clause 58. In considering the results for electronic price tenders, in the case where price criteria have been adopted to support other criteria, if it turns out that the price of the tenderer obtaining the highest scores is higher than the cost estimate under Clause 22, the committee shall negotiate the price to be as low as possible with such tenderer through the electronic price tender system. In the case where such tenderer agrees to reduce the price and submit a new quotation to the electronic price tender system and the new price does not exceed the cost estimate for the procurement; or higher but not exceeding ten percent of the cost estimate for the procurement; or the officer has negotiated but the tenderer does not agree to reduce the price and the exceeding amount is not higher than ten percent of the cost estimate, if the price is appropriate, the process shall be proceeded with such tenderer;

If the act carried out under paragraph one is not successful, the officer shall propose opinions to the head of State agency through the head officer to support the consideration whether to request for higher cost estimate or dismiss the procurement and conduct a new electronic price tender. However, if the head of State agency considers and sees that a new electronic price tender may not be effective, he or she may order to proceed for a new procurement by using the selection method under Section 56 paragraph one (1) (a) or the specific method under Section 56 paragraph one (2) (a), as the case may be. This is except for the case where the State agency has proceeded for the specific method by other reasons. In such case, the new procurement shall be conducted by providing procurement report under Clause 22.

Clause 59. Prescribing that the provisions under Clause 42 shall be implemented on the announcement of successful tenderer by the electronic price tender method *mutatis mutandis*.

Clause 60. For international procurement, the following procedures shall be followed:

(1) the State agency provides a draft of scope of work or specifications of supplies or construction plan to be procured, as the case may be, according to Clause 21;

(2) provision of procurement documents for the international price tender method and solicitation notifications shall be at the discretion of the head of State agency whether to be in the Thai or English language;

(3) the provisions under Clause 44 to Clause 59 shall be applied to the international price tender *mutatis mutandis*, with an exception that the publication of notifications or procurement documents shall be published for at least 30 consecutive business days.

Price Comparison

Clause 61. Officers shall provide procurement documents by the price comparison method and solicitation notifications according to the form prescribed by the Policy Committee.

It is permissible, where necessary, to conclude any procurement draft and announcement procurement draft and announcement with statements or particulars different from those in the procurement draft and announcement form under paragraph one, provided that key substances thereof correspond to those provided in the contract form and do not place the State agency at disadvantage, except that where the head of State agency considers that there may be problems involving prejudicial effects or imprecision, it shall refer the procurement draft and announcement in question to the Office of the Attorney-General for prior consideration and approval.

The prescription of date, time of quotation in procurement documents and solicitation notifications under paragraph one shall be the following day of the last day of the publication period for such procurement documents and solicitation notifications by indicating one business day and operational time only.

The prescription of date and time for the opening of quotation envelope shall be indicated in the business day and operational time following the day of proposal under paragraph three.

Clause 62. It is permissible that a state agency may publish drafts of procurement documents or notifications by the price comparison method to obtain feedback from the operators.

In the case where the State agency publishes drafts of procurement documents or notifications by the price comparison method to obtain feedback from operators, the provisions under Clause 46 and Clause 47 shall be applied *mutatis mutandis*.

Clause 63. When the head of State agency grants approval for the procurement report under Clause 22 and drafts of procurement notifications and documents by the price comparison method, the head officer shall publish such notifications and documents for price comparison on information network systems of the Comptroller-General's Department and those of State agency for at least 5 consecutive business days by concerning the period for operators to prepare documents for the proposal.

Clause 64. The provisions under Clause 49 shall be applied to the distribution or selling of documents for price comparison *mutatis mutandis*.

Clause 65. The Comptroller-General's Department shall submit notifications and price comparison documents of State agency to the State Audit Office of the Kingdom of Thailand through the electronic system.

Clause 66. The procurement that is necessary by conditions of procurement shall define conditions in the documents for price comparison with details or location. The State agency shall specify date, time and location for detail clarification or location specification in the document for price tenders.

Before the date of price tenders, if the State agency sees that it is necessary to define additional details or location specification, which is an amendment to essential qualifications and is not defined in the documents for price comparison since the beginning, the State

agency shall provide additional documents for price comparison, indicating date, time and location for detail clarification by proceeding for the publication on the information systems of the Comptroller-General's Department and that of the State agency, and inform all persons who have already accepted or purchased documents for price comparison through electronic letter according to the form prescribed by the Comptroller-General's Department.

For the clarification of details or location under paragraph two, it prescribes that the person responsible for such matter shall provide a memo to clarify details or location in writing as evidence every time.

If the act under paragraph two is carried out, the State agency shall consider postponing date and time for price tenders and the opening of envelope as appropriate based on the case.

Clause 67. Prescribing that the State agency shall specify date, time and location to request for or purchase documents for price comparison at the location prescribed by the State agency. The request or purchase of documents for price comparison can be done from the starting date until the last day of the publication of announcement and documents for price comparison under Clause 63.

Clause 68. In submitting proposal envelope, the tenderers must address to the President of the committee in charge of the price consideration of the price tender and directly submit to the State agency which conducts the price comparison and certify the documents altogether with the envelope of quotation that all documents are accurate and contain only the truths.

The officers shall accept the documents without opening the envelop and indicate date and time of acceptance. In the case where the tenderer comes and directly submit the envelop, an acceptance certificate must be issued for the tenderer. All the envelopes of quotation and documents accepted shall be submitted to the price consideration committee for further process.

Clause 69. Apart from the case prescribed under Clause 66, when it is the date specified to submit the envelope, such date cannot be postponed or changed.

Clause 70. When the date and time to open envelope are due, the price consideration committee shall open the envelope and review all the documents of all tenderers and all the committee members shall affix signatures on the quotation and documents supporting the quotation every page thereof. The provisions under Clause 55 (2) – (4) shall be applied to the proceeding of selection of successful tenderer for the procurement conducted by the committee in charge of price consideration *mutatis mutandis*.

Clause 71. In the case where there is only one tenderer; or there are many tenderers, but only one tenderer follows the conditions of the price comparison; or there is no tenderers; or there are tenderers, but none of them follows the conditions prescribed in the documents for price comparison, it prescribes that the committee in charge of price consideration shall carry out the act under Clause 56 *mutatis mutandis*.

If it appears that the price of the successful tenderer is still higher than the price estimate for such procurement, it prescribes that the committee shall summon such tenderer for price negotiation by carrying out the acts under Clause 57 or Clause 58, as the case may be, *mutatis mutandis*.

Clause 72. Prescribing that the provisions under Clause 42 shall be applied to the announcement of successful tenderer for procurement through the price comparison method *mutatis mutandis*.

Clause 73. Prescribing that the provisions under Clause 60 shall be applied to the international price comparison *mutatis mutandis*.

Selection Method

Clause 74. When the head of State agency approves the procurement report under Clause 22, the Procurement Committee in charge of the selection method shall carry out the following acts:

(1) providing invitation document for at least 3 operators whose qualifications matching the conditions prescribed by the State agencies to submit quotations. This is except for the case where there are less than 3 operators whose qualifications matching the ones specified by concerning the common interests of the tenderers and also providing a list of operators to whom the committee has sent the letters;

(2) for the submission of quotation envelopes and receipt of quotation envelopes, the act under Clause 68 shall be carried out *mutatis mutandis*;

(3) when the date and time for receiving of quotation are due, only quotation envelopes of tenderers to whom the committee has issued invitation letters shall be accepted, and the committee shall provide a list of tenderers submitting quotations;

When it passes the deadline of the receiving of quotation envelopes, any document and supply sample shall be accepted according to the conditions prescribed in the additional invitation from the tenderers. This is except for the case where any procurement has details that are necessary by conditions indicating that the tenderers must present samples of supplies for testing, or demonstrating or presenting; or the tenderers shall submit documents or the details subsequent to the day of quotation submission.

(4) when the date and time for opening the envelope is due, the committee shall open the quotation envelope and review all the documents of all tenderers and all the committee members shall affix signatures on the quotation and documents supporting the quotation every page thereof. The provisions under Clause 55 (2) – (4) shall be applied to the proceeding of selection of successful tenderer for the procurement conducted by the committee in charge of price consideration *mutatis mutandis*.

Clause 75. In the case where there is only tenderer or there are many tenderers but only one tenderer follows the invitation letter, the Committee shall carry out the act under Clause 56 *mutatis mutandis*.

In the case where there is no one tendering price; or there are, but not in line with the conditions prescribed in the invitation, the head of State agency shall be informed of such matter through the head officers to cancel such selection and a new selection through the specific method under Section 56 paragraph one (2) (a) may be conducted.

If it appears that the price of the tenderer that the committee agree to proceed procurement with is higher than the price estimate for procurement, the committee shall summon such tenderer to negotiate the price by following the act under Clause 57 or Clause 58, as the case may be, *mutatis mutandis*.

Clause 76. For the procurement under Section 56 paragraph one (1) (g), if it cannot be operated normally, the committee shall inform the operators to submit technical proposals for consideration in order to be in line with the requirements prior to the consideration in terms of price. The Committee shall consider selecting the best technical proposals and ranking. After that, the officers shall invite the tenderers who submit the best technical proposals to submit another quotation for the price and shall negotiate to obtain the most suitable price. If the negotiation does not work, a negotiation shall be conducted to the tenderers with best technical proposals.

If the act under paragraph one is followed, but not effective, the opinions shall be referred to the head of State agency through the head officers to dismiss such procurement and to order to conduct a new procurement once again by using the specific method according to Section 56 paragraph one (2) (a).

Clause 77. The provisions of Clause 42 shall be applied to the announcement of successful tenderer in the procurement or successful tenderer from the selection method *mutatis mutandis*.

Specific Method

Clause 78. When the head of State agency grants approval the procurement report under Clause 22, the Procurement Committee by means of Specific Method shall carry out the following acts:

(1) providing solicitation for any operator whose qualifications matching the conditions prescribed by the State agency to submit quotation or negotiate prices by carrying out the following act.

(a) for the case under Section 56 paragraph one (2) (a), prescribing that operators that directly sell or provide contracting works of such supplies shall be invited to tender prices; or the committee may invite tenderers from those joining procurement through the general solicitation method or the selection method that have been formerly cancelled (if any) to tender prices again. In this regard, if the operator agreed to conduct procurement has proposed higher price than the focal price in the market or than the cost estimate, or the price seen by the committee as appropriate, it prescribes that the committee shall be able to negotiate the price with such tenderer;

(b) for the case under Section 56 paragraph one (2) (c) (d), prescribing that operators that directly sell or provide contracting works of such supplies shall be invited to tender prices. If seeing that the quoted price is higher than the local price, or the price seen by the committee as appropriate, it prescribes that the committee shall be able to negotiate the price with such tenderer to be lowest as possible;

(c) for the case under Section 56 paragraph one (2) (e), the committee shall negotiate with the former operators according to the contract or agreement which is not due in order to request for a procurement with a lower or equal price within a better or the same conditions by concerning the price per unit according to the former contract (if any) to achieve the highest benefits of the State agency;

(d) for the case under Section (2) (f), the act can be carried out through the price negotiation method;

(e) for the case under Section 56 paragraph one (2) (g), it prescribes to invite the owner of the land or construction to tender the price. If seeing that the quoted price is still higher than the market price, or than the price seen by the committee as appropriate, the quoted price shall be negotiated to be as low as possible;

(2) providing reports of consideration result by applying the provisions of Clause 55 (4) *mutatis mutandis*.

Clause 79. For the case under Section 56 paragraph one (2) (b), it prescribes that the officers shall negotiate the price with the operators who sell or provide contracting works of such supplies directly, and the head officers shall conduct the procurement within the budget approved by the head of State agency under Clause 24.

For the procurement under paragraph one, in the case where it is an emergency that is not formerly expected, and a usual process cannot be proceeded, it prescribes that the officers or persons responsible for such performance shall carry out action in the meantime and submit a report requesting for approval to the head of State agency without delay. When the head of State agency grants the approval, it shall be deemed that such report is evidence of inspection for acceptance *mutatis mutandis*.

Clause 80. The procurement of which the budget slightly exceeds the budget prescribed in the Ministerial Regulation according to the provisions under Section 96 paragraph two, the State agency may proceed the new procurement through the electronic systems according to the procedures prescribed by the Comptroller-General's Department.

Clause 81. Prescribing that the provisions of Clause 42 shall be applied to the announcement of successful tenderers under the specific method *mutatis mutandis*.

Design and Construction Work

Clause 82. Any State agency wishes to provide a project of design and construction work of which the pattern and scope of work covers survey, design and construction until complete, including the maintenance service during the starting period of the project, by only one operator, the project must be proposed to the Cabinet for approval prior to the project initiation.

The procurement for design and construction work can be done in 3 types as follows:

(1) Design and Build Project is a project of which the investment and technological budget are high. The project can be managed in many ways. Mostly, it is a new project that has never conducted before in the country. As a result, it is necessary to hire a contractor who is knowledgeable, skillful and has techniques to conduct work requiring special expertise. Especially, the operational payment of the project shall be in installment based on the progress of the project.

(2) Turnkey Project is a project that the employer shall provide a contractor to proceed the project until complete in order to receive the operational fee. The contractor may be responsible for finding funds for the operation of such project and the employer must have reference-based price to support the consideration of the project.

(3) Design and build project altogether with funding (or complete and full contract) is a project that combines both types of project. The contractor shall be responsible for designing and building and finding funds for operating the business. The employer shall pay the operational fees once the assignment is complete.

Criteria, procedures and process details and procedures for design and building work shall be as prescribed by the Comptroller-General's Department with consent of the Policy Committee.

Criteria for Proposal Selection

Clause 83. In considering for selection of the proposals by means of general invitation or selection method, it prescribes that the State agency shall conduct operation by considering the benefits of the state agency and objectives of the usage according to the criteria as follows:

(1) procurement that defines standard specifications of supplies with good quality sufficient to the usage and is beneficial to state official. For this case, the state agency shall be able to use the price criteria to choose the tenderer with the lowest price to win the procurement;

(2) procurement of supplies that are complex, require high technologies or specific techniques and quality as required by the State agency and are most beneficial to the State agency. For this case, the state agency shall use the price criteria altogether with other criteria under Section 65 paragraph one in considering the tenderer with quality and qualifications that are accurate and complete. The tenderer obtaining the highest total scores shall be successful in such procurement. However, if the State agency cannot choose by using other criteria and requires using the only criteria for consideration, the price criteria shall be used.

(3) procurement that requires to have specific qualifications and needs to concern technologies of supplies or qualifications of the tenderers, it prescribes that State agencies shall define a condition, indicating that all tenderers need to submit a technical proposal or other necessary proposals separately and let the State agency consider the tenderers whose qualifications are accurate, complete and beneficial to the state agency with the scores of proposal in terms of technical matter or other proposal more than the minimum criteria prescribed by the State agency. In such case the act under (1) or (2) shall be carried out.

Where appropriate, the Policy Committee may define guidelines for selection of additional proposals as seen necessary and appropriate.

Authority for Procurement

Clause 84. Procurement by means of general solicitation shall be under the authority of the persons holding the position and within the budget as follows:

- (1) head of state agency, not exceeding 200,000,000 baht;
- (2) person with 1 level of superior authority, exceeding 200,000,000 baht;

Clause 85. Procurement by means of selection shall be under the authority of the persons holding the position and within the budget as follows:

- (1) head of state agency, not exceeding 100,000,000 baht;
- (2) person with 1 level of superior authority, exceeding 100,000,000 baht;

Clause 86. Procurement by means of specific method shall be under the authority of the persons holding the position and within the budget as follows:

- (1) head of state agency, not exceeding 50,000,000 baht;
- (2) person with 1 level of superior authority, exceeding 50,000,000 baht;

Clause 87. The person with 1 level of superior authority under Clause 84, Clause 85, and Clause 86 shall be in accordance with the account attached to this regulation.

Clause 88. Any state enterprise requires to define authorized person and budget for procurement under Clause 84, Clause 85, Clause 86, and Clause 87 differently from the statement prescribed in this regulation shall propose to the Ruling Committee for approval and when the approval is granted, the results must be informed to the State Audit Office of the Kingdom of Thailand.

Advance Payment

Clause 89. Advance payment for supplies to the operator that is a contractor cannot be done with an exception for the case where the head of State agency sees that it is necessary to pay and there are conditions defined prior to the settlement of contract or agreement. In this regard, such act can be carried out only for the cases and according to the criteria as follows:

- (1) procurement from State agency, the payment can be settled not exceeding 50 percent of the procurement price;
- (2) the purchase of supplies from State institutes located in foreign countries, or from other agencies located in foreign countries, which must be conducted through international organizations, or purchase of scientific utensils or other supplies that the person in chief of this regulation prescribes, which requires to purchase from the manufacturer or distributor located in foreign country directly. In such case, the payment can be settled as agreed with the State institutes or the international organization or as the conditions prescribed by the seller, as the case may be;
- (3) registering for journal or reserving books or purchasing constant data base that requires member registration and the issuance is based on occasion, such as journals, or accepting of membership to benefit from information on the information technological systems. In such case, the actual payment shall be settled;
- (4) procurement by the general solicitation method, selection method and specific method, apart from the case under Section 56 paragraph one (2) (b). It prescribes that the payment shall be settled only when it does not exceed fifty percent of the procurement price; however, the supplies rate must be defined as conditions in the announcement and invitation documents or invitation letters, as the case may be.

Clause 90. The payment according to the international trade norms by opening the Letter of Credit or using the draft method in the case where the budget does not exceed 500,000 baht or the payment based on the progression of the work in supplies purchase shall be done without deeming as advance payment.

Clause 91. The advance payment under Clause 89 (1), (2) and (3) shall not request for collateral.

For the advance payment under Clause 89 (4), the operator which is a contractor shall use Thai government bonds or guarantee letters or electronic guarantee letters of domestic banks to guarantee the money advanced, and it prescribes that the state agency shall return such guarantee letters to the contractor when a State official deducts the money advanced from the supplies or fees of each instalment completely. In such case, the details must be specified as conditions in the contract.

Part 3

Rental

Clause 92. For the rental of movable property and rental of real estate according to the criteria prescribed under this Chapter, it prescribes that the head of state agency shall consider proceeding the operation based on appropriation and necessity. The regulations in respect of the purchase of real estates shall be applied to the rental of real *estate mutatis mutandis*.

In the case where it is necessary to settle an advance rental fee for a rental of a real estate and movable property, such action can be done only for the rental of which the rental period does not more than 3 years according to the following criteria:

- (1) rental from a State agency. Not more than fifty percent of the rental fees of such contract can be settled;
- (2) rental from the private sector. Not more than twenty percent of the rental fees of such contract can be settled.

Rental of Real Estates

Clause 93. The rental of a real estate shall be conducted in the following cases:

- (1) renting a land for official benefits;
- (2) renting a location for the use as an office in the case where there is not such location of State agency, or there is, but not sufficient to the use, and if such rented location is spacious enough, it shall be used as accommodation of persons eligible for rental fees according to the regulations of the government sector or state agency;
- (3) renting a place to be used as accommodation for persons eligible for rental fees according to the regulations of the government sector or State agency in the case where the budget needs to be economized.
- (4) renting a place to store supplies of State agency in the case where the existing storage has no sufficient space.

The details regarding rental shall be directly negotiated with the leaser.

Clause 94. Prior to renting premises, prescribing that the officers shall provide a report and propose to the head of state agency for approval by proposing through the head officer according to the following list:

- (1) reasons and necessity for rental;
- (2) rental fees quoted by the leaser;
- (3) details of the real estate to be rented, such as conditions of the location altogether with images (if any), and the latest rental fee, etc.

(4) rental fee of the real estate of which the size and condition are similar to the location to be rented (if any).

Clause 95. The real estate of which the rental fees, including other service fees, are arisen from the rental described in the contract, shall be in accordance with the following criteria:

(1) central government and provincial government shall be in accordance with the criteria and rates prescribed by the Ministry of Finance;

(2) local government shall be in accordance with the criteria and rates prescribed by the Ministry of Interior, Bangkok Metropolis, or Pattaya City, as the case may be;

(3) agencies of other States shall be in accordance with the criteria and the rate prescribed by such State agency.

Part 4 Exchange

Clause 96. Exchange of supplies shall not be conducted, except for the case where the head of State agency sees that it is necessary for exchange. In such case, exchange can be conducted only for exchange of durable articles and exchange of supplies according to the following criteria:

(1) an exchange of durable articles and durable articles in the same type and category shall be done, with an exception of an exchange of some durable articles that the Bureau of Budget or state agencies responsible for the control of such supplies prescribes or an exchange that requires additional charges shall settle agreement with the Bureau of Budget or state agency of such State;

(2) an exchange of durable articles and durable articles from different types and categories must be first settled into agreement with the Bureau of Budget or agencies of such State in any case;

(3) an exchange of supplies and supplies that do not require additional payment shall be conducted.

Clause 97. In the case where there is an exchange of supplies, the officer shall report to the head of the state agency through the head officers for consideration to give an order. The report must be made in accordance with the following list:

(1) reasons and necessity for the exchange;

(2) details of the supplies to be exchanged;

(3) purchasing price of the supplies to be exchanged and approximate price to be exchanged;

(4) supplies to be accepted for exchange and the details must be indicated whether the supplies are to be exchanged with public or private agencies;

(5) other suggestions (if any).

In the case of exchanging supplies with the private sector, the exchange method must be indicated altogether with the reasons by proposing to adopt the purchase method for purchase *mutatis mutandis*. This is except that the exchange of supplies each time of which

the purchase price or gaining price in total is not more than 500,000 baht, the specific method shall be proposed by negotiating the exchange.

Clause 98. In exchanging supplies with the private sector, it prescribes that the head of agency shall appoint a committee, or several committees as seen necessary. The committee shall execute the provisions under Clause 26 and Clause 27 as the case may be *mutatis mutandis*.

The committee shall have duties as follows:

(1) review and evaluate price of supplies to be exchanged based on the current conditions of such supplies;

(2) review specifications of supplies to be accepted from exchange whether they are new, with an exception that the old supplies to be accepted from the exchange is necessary and not puts the state agency at a disadvantage position or for the benefits of the state agency;

(3) compare price of supplies to be exchanged by considering based on the evaluated price under (1) and price of supplies to be accepted from the exchange, which shall be in accordance with the focal price or standard price or the price in the general market;

(4) negotiate with tenderers whom the committee sees that the exchange should be conducted with;

(5) propose opinions to State agency for consideration to make an order;

(6) inspect to accept supplies by following the provisions under Clause 175 *mutatis mutandis*.

Clause 99. The exchange of supplies of the State agency with State agency shall be at the discretion of the head of such State agency in which an agreement is to be settled.

Clause 100. For durable articles accepted from the exchange, when durable articles of the State agency is registered, the Bureau of Budget or State agency responsible for controlling such supplies and the Office of Auditor-General of Thailand, as the case may be, shall be informed within 30 days from the day the durable articles are received.

In the case where the exchange of durable articles is conducted between public or private agencies, copies of evidence for operation under Clause 97 or Clause 98 shall be submitted.

Chapter 3

Consultancy Work

Part 1

General Provisions

Clause 101. For consultant work, it is a service as a consultant to provide advice or suggestion for State agencies. A consultant who may participate in tendering the work to a State agency must be the consultant registered with the Consultants Information Centre of the Ministry of Finance unless there is written certification from the Consultants Information Centre of the Ministry of Finance that there is no consultant offering services for such work or it is the consultancy work of a State agency in a foreign country.

In the case where it is necessary to employ a foreign consultant, a State agency shall indicate reasons and necessity for an employment of a foreign consultant in the report of procurement. In the procurement of such foreign consultant, there shall be Thai personnel joining the team in order to convey knowledge and technologies to the Thai personnel, except that the field of service or procurement does not have Thai personnel.

Clause 102. Any State agency wishes to procure consultants for other State agencies shall specify criteria, procedures and details for consultancy work and propose them to the Policy Committee for approval. When the approval is granted, the State agency shall proceed the procurement according to the procedures specified.

In the case where it is appropriate, the Policy Committee may announce to prescribe criteria, procedures, and details of consultancy work for State agencies to follow.

Part 2

Consultancy Work Process

Provision of Scope of Consultancy Work Draft

Clause 103. For consultancy work, the head of State agency shall appoint a committee, or may entrust an officer or any person to be responsible for providing a draft for consultancy work and specifying selection criteria.

Components, period of consideration and committee meetings under paragraph one shall be as prescribed by the head of State agency as seen necessary and appropriate.

Procurement Report for Consultancy Work

Clause 104. In consultancy work, the officer shall provide a report for procurement of consultancy work and propose to the head of State agency for approval through the head officer according to the following lists:

- (1) reasons and necessity for consultancy work;
- (2) scope of consultancy work;
- (3) qualification of consultant;
- (4) focal price for consultancy work;
- (5) cost estimate for consultancy work.;
- (6) period for consultancy work;
- (7) selection method for consultancy work;
- (8) criteria for selection of proposal;
- (9) other proposals, such as request for approval of committee appointment necessary for consultancy work, issuance of solicitation notifications and documents for consultancy work.

When the head of State agency approves such report under paragraph one, the officer shall proceed for the procurement according to the method proposed.

Committee in charge of Consultancy Work

Clause 105. For each procurement of consultancy work, the head of State agency shall appoint a committee to be in charge of consultancy work in order to execute this Regulation, and specify consideration period for the committee, as the case may be, as follows:

- (1) committee in charge of consultancy work by the general solicitation notification method;
- (2) committee in charge of consultancy work by the selection method;
- (3) committee in charge of consultancy work by the specific method;
- (4) inspection committee for acceptance of consultancy work.

Prescribing that each committee in charge of consultancy work shall report consideration results to the head of State agency within the period specified. If there is a cause delaying the process, such matter shall be reported to the State agency to consider for extension of the operational period as seen necessary.

Clause 106. Each committee under Clause 141 shall consist of one Chairperson and at least four committee members appointed from government officials, employees, government officers, university staff, public officers, or employees of State agencies called by other names of such State agency by concerning the duties and responsibilities of the appointed persons. In the case where consultancy work is conducted by using loans which the Ministry of Finance has obtained from foreign countries, a representative from the Public Debt Management Office shall be one of the committee members.

In the case where it is necessary, or for benefits of State agencies, third persons may be appointed as committee members, but the number of members held by the third persons must not be higher than that of the committee under paragraph one.

All committee in charge of consultancy work should appoint specialists or qualified persons specializing in such work as committee members.

Clause 107. The provisions under Clause 27 shall be applied to the quorum of the committee, resolutions of the committee, and having of direct interest with the topic discussed in the meeting *mutatis mutandis*.

Consultancy Work Selection Methods

Clause 108. Consultancy work can be conducted by 3 methods as follows:

- (1) general solicitation notification method;
- (2) selection method;
- (3) specific method.

General Solicitation Notification Method

Clause 109. The officer shall provide documents for consultancy work by the general solicitation notification method and solicitation notifications as prescribed by the Policy Committee.

It is permissible, where necessary, to conclude any document for consultancy or solicitation notification with statements or particulars different from those in a document form under paragraph one, provided that key substances thereof correspond to those provided in the contract form and do not place the State agency at disadvantage, except that where a State agency considers that there may be problems involving prejudicial effects or imprecision, it shall refer the document for consultancy or solicitation notification in question to the Office of the Attorney-General for prior consideration and approval.

Date and time for tendering proposals indicated in documents for consultancy work and solicitation notifications under paragraph one shall be specified as only one business date and time subsequent to the last day of the publication of the notifications and documents.

Clause 110. When the head of State agency approves report for consultancy work under Clause 104, the head officer shall publish such report on an information network system of the Comptroller-General's Department and that of the State agency and shall cause the same to be posted openly at the posture place of such State agency for at least 5 consecutive business days by concerning a period for consultants to prepare documents for the proposal.

The distribution of documents for consultancy work by the general solicitation notification method shall be carried out together with the publication of the notification and documents for consultancy under paragraph one in order for consultants desirous to tender proposals to request for documents for consultancy work from the starting date until the last date of the publication thereof.

Clause 111. The Comptroller-General's Department shall submit notifications and documents for consultancy work to the State Audit Office of the Kingdom of Thailand through the electronic system.

Clause 112. When it comes to the date of submission of proposal for consultancy work, such date cannot be shortened, or postponed, or changed.

Clause 113. In tendering proposals, consultants desirous to tender a proposal shall address the proposal to the batch's President of the committee in charge of consultancy work by the general solicitation notification method and directly submit it to the hiring State agency and certify that all the documents submitted are accurate and true.

The officer shall accept such documents without opening the envelop and indicate date and time of acceptance. In the case where a consultant submits an envelope himself/herself, the officer shall issue a receipt and deliver all the proposal envelopes and documents accepted to the committee in charge of consultancy work by the general solicitation notification method of that batch for further process.

The submission of envelope through information systems of the Comptroller-General's Department shall be in accordance with the procedures prescribed by the Comptroller-General's Department.

Clause 114. When it comes to the date to open the envelopes, the committee in charge of consultancy work by the general solicitation notification method shall carry out the following acts:

(1) open the proposal envelopes and review the documents submitted by all consultants and the committee members shall affix their signatures on every page thereof;

(2) review mutual benefits among the tenderers and documents submitted by the consultants and select the consultants who do not have mutual benefits with other consultants and who have submitted complete, accurate documents with qualifications and proposal in line with the conditions specified by the State agency in the solicitation documents.

In the consideration process, the committee may inquire additional facts from any consultant, but cannot ask them to amend material parts already proposed. If the committee sees that any consultant does not possess complete qualifications according to the conditions specified by the State agency in the solicitation documents, the committee shall remove the name of such consultant from the selection.

In the case where any consultant incompletely submits documents under the quality criteria or the details submitted are different from the conditions specified by the State agency in the notifications or documents for consultancy work, provided that they are not key substances and such differences do not cause any disadvantage to other consultants or are minor mistakes, such consultant may not be considered to suspend the right for tendering proposals and can be proceeded for the next consideration process.

(3) open envelopes for the price proposal of consultants who meet the criteria under (2) and consider not more than three consultants tendering the lowest price and make them in order.

In the case where the consultant tendering the lowest price does not settle into contract with the State agency within the time specified in the documents for consultancy work, the committee shall consider the consultant tendering the second lowest price.

In the case where there are many consultant tendering equal prices, the committee shall summon such consultants to resubmit the price proposal by submitting price proposing envelope and consider the consultant proposing the lowest price;

(4) provide a report of consideration results of which the details at least include the followings:

(a) consultancy work description;

(b) names of consultants, proposal budget and proposals of all consultants;

(c) names of consultants achieving the criteria of not having mutual benefits;

(d) selection and scoring criteria;

(e) selection results and scoring of proposals tendered by all consultants with reasons to support the consideration.

Clause 115. When the committee for consultancy work by the general solicitation notification method has considered the proposals according to Clause 114 and it turns out that there is only one consultant, or there are several consultants tendering proposal, but only one

consultant is successful, the committee shall propose to the head of State agency through the head officer to dismiss such general solicitation notification. However, if the committee considers and sees that there is a reasonable cause to continue the process without dismissing the general solicitation notification, the committee shall negotiate with such consultant.

In the case where there are no consultants tendering proposals or the proposals tendered are not selected, the committee shall propose to the head of State agency through the head officer to consider dismissing such procurement. However, if the head of State agency considers and sees that a new procurement by the general solicitation notification method may not be effective, he or she may order to proceed for a new procurement by using the selection method under Section 70 paragraph one (2) (a) or the specific method under Section 70 paragraph one (3) (a), as the case may be. This is except for the case where the State agency has proceeded for the specific method by other reasons. In such case, the new procurement shall be conducted by providing procurement report under Clause 104.

Clause 116. For consultancy work by the general solicitation notification method, if it turns out that the price proposed by the selected consultant is still higher than the price estimate under Clause 104, the committee shall carry out the following acts:

(1) negotiate with the consultant that the committee agrees to hire for the price to be lowest as much as possible. If such consultant agrees to reduce the price and the price newly quoted is not higher than the cost estimate, or higher but not exceed ten percent of the cost estimate, or the consultant does not agree to reduce the price, but the exceeding portion is not higher than ten percent of the cost estimate, if the committee sees that such price is appropriate, it shall proceed for the procurement with such consultant;

(2) if the act under (1) is not effective, the committee shall inform all consultants achieving the quality criteria to resubmit proposals and price proposing envelopes within the time specified by the State agency. If any consultant does not submit price proposing envelope, it shall be deemed that such consultant confirms the price previously proposed;

(3) if the act under (2) is not effective, the committee shall propose to the head of State agency through the head officer to support the discretion for additional budget or dismiss such procurement and conduct another procurement by using the general solicitation notification. However, if the head of State agency has considered and seen that the new procurement using the general solicitation notification method may not be effective, the committee may proceed the process by using the selection method or the specific method under Section 70 paragraph one (2) (a) or Section 70 paragraph one (3) (a), as the case may be. This is except that the State agency has proceeded for the procurement by the specific method by other reasons. In such case, the procurement shall be conducted again with a provision of report requesting for procurement under Clause 104.

Clause 117. After completing the acts under Clause 114, Clause 115, or Clause 116, as the case may be, the committee in charge of consultancy work by the general solicitation notification method shall report the consideration results and opinions and submit all documents concerned to the head of State agency through the head officer for approval.

Clause 118. When the head of State agency reports the consideration results under Clause 117 and the competent person approves the procurement, the head officer shall announce the selection result of consultancy work by the general solicitation notification method on information network systems of the Comptroller-General's Department and of the State agency in accordance with the procedures prescribed by the Comptroller-General's Department and shall cause the same to be posted openly at the posture place of such State agency, and inform all the consultants tendering proposal via e-mail according to the form specified by the Comptroller-General's Department.

Selection Method

Clause 119. When the head of State agency grants approval for the report of consultancy work under Clause 104, the officer shall request for a list of consultants in the required fields from the Consultants Information Center, the Ministry of Finance, and submit to the committee in charge of consultancy work by the Selection method for further process.

Clause 120. The committee in charge of consultancy work by the Selection method shall carry out the following acts:

(1) provide solicitation documents to invite at least 3 consultants whose qualifications meet those specified, except that there are less than 3 consultants whose qualifications meet those specified for such work, to tender proposals by concerning non-mutual benefits among the tenderers and provide a list of the consultants receiving the solicitation documents;

(2) submission of proposal envelopes and acceptance of proposal envelopes shall be subject to the provisions under Clause 113 *mutatis mutandis*.

(3) when it comes to the expiration of the acceptance of proposal envelopes, proposal envelopes shall be accepted only from those submitted by consultants to whom the committee has issued solicitation documents. A list of tenderers shall be provided.

After the expiration of the acceptance of proposal envelopes, any documents shall not be accepted according to the conditions prescribed in the additional solicitation documents from the consultants;

(4) when it comes to the expiration of the opening of proposal envelopes, proposal envelopes and documents submitted by all consultants shall be opened. All committee members shall affix their signatures on every page thereof.

(5) review mutual benefits among the tenderers and documents submitted by the consultants and select the consultants, who do not have mutual benefits with other consultants, with complete, accurate documents and qualifications and proposal that are in line with the conditions specified by the State agency in the solicitation documents.

In the consideration process, the committee may inquire additional facts from any consultant, but cannot ask them to amend a material part proposed. If the committee sees that any consultant does not possess complete qualifications according to the conditions specified by the State agency in the solicitation documents, the committee shall remove the name of such consultant from the selection.

In the case where any consultant incompletely submits documents under the quality criteria or the details submitted are different from the conditions specified by the State agency in the notifications or documents for design or construction supervision work, provided that they are not key substances and such differences do not cause any disadvantage to other consultants or are minor mistakes, such consultant may not be considered to suspend the right for tendering proposals and can be proceeded for the next consideration process.

(6) consider for selection of proposals of consultants that are in line with (5) and achieve the quality criteria prescribed by the State agency and make them in order out of the scores. The successful consultant shall be selected based on the following criteria:

(a) in the case where the consultancy work is in line with the standards or a State agency or is a complicated work, the successful consultancy shall be selected from those with the highest total quality scores and pricing scores;

(b) in the case where the consultancy work is for a very complicated work, the successful consultancy shall be selected from those with the highest quality scores.

In the case where the selected consultant does not settle into contract with the State agency within the time specified in the documents for consultancy work, the Committee shall consider the consultant obtaining the second highest quality scores according to (a) or (b) as the case may be;

(7) in the case where there are many consultants obtaining equal scores, the following acts shall be carried out:

(a) in the case under (6) (a), the consultants obtaining the highest quality scores shall be considered;

(b) in the case under (6) (b), the consultants proposing the lowest price shall be considered.

(8) the provisions of Clause 114 (4) shall be applied to the provision of report of consideration results *mutatis mutandis*.

Clause 121. When the committee for consultancy work by the selection method has considered the proposals according to Clause 120 and it turns out that there is only one consultant, or there are several consultants tendering proposal, but only one consultant is successful, the committee shall propose to the head of State agency through the head officer to dismiss such selection. However, if the committee considers and sees that there is a reasonable cause to continue the process without dismissing the selection, the committee shall negotiate with such consultant.

In the case where there are no consultants tendering proposals or the proposals tendered are not selected, the committee shall propose to the head of State agency through the head officer to consider dismissing such procurement. However, if the head of State agency considers and sees that a new procurement by the selection method may not be effective, he or she may order to proceed for a new procurement by using the specific method under Section 70 paragraph one (3) (a). This is except for the case where the State agency has proceeded for the specific method by other reasons. In such case, the new procurement shall be conducted by providing procurement report under Clause 104.

Clause 122. In the case where it appears that the price of the successful or selected consultant is still higher than the cost estimate under Clause 104, the committee in charge of consultancy work by the selection method shall carry out acts as follows:

(1) negotiate with the consultant that the committee agrees to hire for the price to be lowest as much as possible. If such consultant agrees to reduce the price and the price newly quoted is not higher than the cost estimate, or higher but not exceed ten percent of the cost estimate, or the consultant does not agree to reduce the price, but the exceeding portion is not higher than ten percent of the cost estimate, if the committee sees that such price is appropriate, it shall proceed for the procurement with such consultant.

(2) if the act under (1) is not effective, the committee shall propose to the head of State agency through the head officer to support the discretion for additional budget or dismiss such procurement and conduct another procurement by using the selection method. However, if the head of State agency has considered and seen that the new procurement using the selection method may not be effective, the committee may proceed the process by using the specific method under Section 70 paragraph one (3) (a). This is except that the State agency has proceeded for the procurement by the specific method by other reasons. In such case, the procurement shall be conducted again with a provision of report requesting for procurement under Clause 104.

Clause 123. The provisions under Clause 118 shall be applied to the announcement of successful consultant by the selection method *mutatis mutandis*.

Specific Method

Clause 124. When the head of State agency grants approval for the report for consultancy work under Clause 104, the committee in charge of consultancy work by the specific method shall carry out the following acts:

(1) provide solicitation documents for any consultant whose qualifications meet the conditions prescribed by the State agency to tender a proposal or enter into negotiations;

(2) consider the proposal tendered by the consultant and directly negotiate with such consultant for the most appropriate, accurate proposal that is most highly beneficial to the State agency and complies with the objectives of such procurement;

(3) provide a report of consideration results by applying provisions of Clause 114
(4) *mutatis mutandis*.

Clause 125. The provisions under Clause 118 shall be applied to the announcement of successful consultant by the specific method *mutatis mutandis*.

Criteria for Proposal Selection

Clause 126. In considering selection of proposal by the general solicitation notification method, or the selection method, apart from considering the quality criteria which consists of (1) performance and experience of the consultant; (2) management and performance procedures; (3) number of personnel in the team; (4) type of consultant that the State wishes to promote or support; (5) financial suggestions; and (5) other criteria prescribed in the Ministerial Regulation, it shall be in accordance with the criteria and weighting under Section 76 paragraph one as follows:

(1) in the case of consultancy work for carrying out routine work, work requiring quality standards in accordance with existing professional principles or uncomplicated work, a State agency shall select tenderers of proposals meeting the quality criteria and select the one tendering the lowest price;

(2) in the case of consultancy work which requires compliance with standards of a State agency or complicated work, a State agency shall select tenderers of proposals meeting the quality criteria and select the one achieving the highest total scores from the quality and price considerations;

(3) in the case of very complicated consultancy work, a State agency shall select tenderers of proposals meeting the quality criteria and select the one achieving the highest score from the quality consideration.

Power to Order for Procurement of Consultancy Work

Clause 127. Procurement for consultancy work shall be under the power of persons holding positions with cost estimate as follows:

- (1) head of the State agency, not exceeding 100,000,000 baht;
- (2) persons holding one level higher position, exceeding 100,000,000 baht.

The persons holding one level higher position under paragraph one shall be in accordance with the account attached to this Regulation.

Clause 128. Any State enterprise requiring to specify competent persons and cost estimation for procurement in pursuance of Clause 127 differently from what prescribed in this Regulation shall propose to the Ruling Committee for approval. When the approval is granted, such matter shall be informed to the State Audit Office of the Kingdom of Thailand.

Remuneration of Consultancy Work

Clause 129. The rate for remuneration of consultancy work shall be suitable and economical by concerning work elements, such as types of assignment, remuneration rate for the same type of work paid by other State agencies, number of man-months as seen appropriate, cost of living index, etc. In this regard, such rate must not be higher than the rate for consultancy work prescribed by the person in charge of this Regulation (if any).

Advance Payment

Clause 130. In the case where it is necessary for advance payment, not more than fifteen percent of the remuneration under contract can be settled and the consultant who is the contractual party shall use a guarantee document or electronic guarantee of domestic banks as a guarantee for such advance payment. The State agency shall return such guarantee document to the contractual party when the State agency deducts the advance payment from the remuneration completely paid based on performance of each stage. In this regard, it shall be specified as conditions in solicitation notifications and documents or invitation documents and in the contract.

For a procurement conducted with a State agency, not more than fifty percent of the remuneration under Contract shall be settled as the advance payment and there may not be advance payment guarantee.

Chapter 4
Design or Construction Work Supervision

Part 1
General Provisions

Clause 131. In the case where any of the central administration, the provincial administration, or the local administration does not have an agency for design or construction work, or does have but such agency cannot make a design or supervise construction, the agency may request for cooperation from the Department of Public Works and Town & Country Planning, Fine Arts Department, or other State agencies that have an agency for design or construction work supervision.

Clause 132. Any State agency that wishes to hire design or construction supervision work for other State agency shall specify criteria, procedures and procurement details for design or construction supervision work and propose to the Policy Committee for approval. When the approval is granted, the State agency shall proceed according to the procedures specified.

In the case where it is appropriate, the Policy Committee may announce to specify criteria, procedures and procurement details for design or construction supervision work for State agencies to follow.

Clause 133. The provider of design or construction supervision work that is a contractual party of a State agency must not have interest with the construction contractor of such work in the following situations:

- (1) having direct interests. The provider shall not be the construction contractor of the work in which it is a contractual party of the State agency;
- (2) having indirect interests. The provider shall not be a subcontractor of a contractual party of a State agency for the work in which it is the provider.

Clause 134. The provider for design or construction supervision work which is a natural person shall be a Thai citizen and possess professional license for architecture or engineering for the work as prescribed by the Act on Architectural or Engineering Professions, as the case may be.

The provider which is a juristic person, managing director, or managing partner of such juristic person must be a Thai citizen and a juristic person of which more than fifty percent of the established capital of the shareholders are Thai.

Clause 135. In the case where the employer or other State agencies wish to use the construction plan for other constructions outside ones prescribed in the contract, such employer or State agencies shall pay fees to such provider for the construction design according to the rate specified by the person in charge of this Regulation.

Clause 136. The provider is not allowed to use the construction plan settled into contract with the employer for other construction projects, except for the case where written approval is granted by the employer.

Clause 137. During the operation according to the procurement contract, the employer may ask the provider of the construction design to revise some details in part that does not have effect to material structure, which shall be in accordance with the construction standards that the provider of construction design has delivered based on the work stages specified in the contract without additional fees.

Clause 138. The provider of construction supervision work shall provide a supervisor that has knowledge and skills suitable for such construction.

The provider of construction supervision work must submit the names of construction supervisors, inspectors, or representatives to the employer for approval. In the case where the supervisor cannot carry out duties specified under paragraph one, the provider of construction supervision work shall propose a name of a representing supervisor. Such representative in that case must be approved by the employer.

Part 2

Design or Construction Supervision Work Process

Provision of Draft for Design or Construction Supervision Scope of Work

Clause 139. For design or construction supervision work, the head of State agency shall appoint a committee, or may entrust an officer or any person to be responsible for providing a draft for design or construction supervision scope of work and specifying selection criteria.

Components, period of consideration and committee meetings under paragraph one shall be as prescribed by the head of State agency as seen necessary and appropriate.

Report for Design or Construction Supervision Work

Clause 140. For design or construction supervision work, the officer shall provide report for the design or construction supervision work and propose to the head of State agency for approval through the head officer according to the following lists:

- (1) reasons and necessity for design or construction supervision work;
- (2) scope of design or construction supervision work;
- (3) qualification of the provider of design or construction supervision work;
- (4) cost estimate for construction;
- (5) approximate fees for design or construction supervision work;
- (6) period of design or construction supervision work;
- (7) method of design or construction supervision work and reasons for use of such method;

- (8) criteria for selection of proposal;
- (9) other proposals, such as request for approval of committee appointment necessary for design or construction supervision work, issuance of solicitation notifications and documents, or invitation documents.

When the head of State agency approves such report under paragraph one, the officer shall proceed for the procurement according to the method proposed.

Committee in charge of Design or Construction Supervision Work

Clause 141. In proceeding each procurement of design or construction supervision work, the head of State agency shall appoint committee in charge of design or construction supervision work to execute this Regulation and determine consideration period for such committee, as the case may be, as follows:

- (1) committee in charge of design or construction supervision work by the general solicitation notification method;
- (2) committee in charge of design or construction supervision work by the selection method;
- (3) committee in charge of design or construction supervision work by the specific method;
- (4) committee in charge of design or construction supervision work by the design competition method;
- (5) committee in charge of inspection for acceptance of design or construction supervision work.

Prescribing that each committee in charge of design or construction supervision work shall report consideration results to the head of State agency within the period specified. If there is a cause delaying the process, such matter shall be reported to the State agency to consider for extension of the operational period as seen necessary.

Clause 142. Each committee in charge of design or construction supervision work under Clause 141 shall consist of one Chairperson and at least two committee members appointed from government officials, employees, government officers, university staff, public officers, or employees of State agencies called by other names of such State agency by concerning the duties and responsibilities of the appointed persons.

Apart from the case under paragraph one, a specialist or qualified committee which is a third party of such procurement may be appointed as a committee member.

Clause 143. The provisions under Clause 27 shall apply to the quorum of the committee, resolutions of the committee, and having direct interest with the topic discussed in the meeting *mutatis mutandis*.

Methods for Design or Construction Supervision Work

Clause 144. The design or construction supervision work can be carried out by 4 methods as follows:

- (1) general solicitation notification method;
- (2) selection method;

- (3) specific method;
- (4) design competition method.

General Solicitation Notification Method

Clause 145. The provisions under Clause 109, Clause 110, Clause 111, Clause 112, and Clause 113 shall be applied on the design or construction supervision work by the general solicitation notification method in this part *mutatis mutandis*.

Clause 146. When it comes to the expiration of the opening of proposal envelopes, the committee in charge of the design or construction supervision work by the general solicitation notification method shall carry out the following acts:

- (1) open the proposal envelopes and review the documents submitted by all providers and the committee members shall affix their signatures on every page thereof;
- (2) review mutual benefits among the tenderers and documents submitted by the providers and select the providers who do not have mutual benefits with other providers with complete, accurate documents and qualifications and proposal that are in line with the conditions specified by the State agency in the solicitation documents.

In the consideration process, the committee may inquire additional facts from any provider, but cannot ask them to amend a material part proposed. If the committee sees that any provider does not possess complete qualifications according to the conditions specified by the State agency in the solicitation documents, the committee shall remove the name of such provider from the selection.

In the case where any provider incompletely submits documents under the quality criteria or the details submitted are different from the conditions specified by the State agency in the notifications or documents for design or construction supervision work, provided that they are not key substances and such differences do not cause any disadvantage to other providers or are minor mistakes, such provider may not be considered to suspend the right for tendering proposals and can be proceeded for the next consideration process;

- (3) consider for selection of proposals tendered by providers that are in line with (2) of which the qualities and qualifications are beneficial to the State agency. The procurement shall be proposed to not more than three providers possessing the highest quality scores and are made in order of the scores.

In the case where the selected provider obtaining the highest quality scores does not settle into contract with the State agency within the time specified in the documents for design or construction supervision work, the committee shall consider the provider obtaining the second highest quality scores;

- (4) provide report of consideration results by applying the provisions under Clause 114 (4) *mutatis mutandis*.

Clause 147. When the committee for design or construction supervision work by the general solicitation notification method has considered the proposals according to Clause 146 and it turns out that there is only one tenderer, or there are several providers tendering proposal, but only one provider is successful, the committee shall propose to the head of State agency through the head officer to dismiss such selection. However, if the committee considers and sees that there is a reasonable cause to continue the process without dismissing the selection, the committee shall negotiate with such provider.

In the case where there are no providers tendering proposals or the proposals tendered are not selected, the committee shall propose to the head of State agency through the head officer to consider dismissing such procurement. However, if the head of State agency considers and sees that a new procurement by the selection method may not be effective, he or she may order to proceed for a new procurement by using the selection method according to Section 81 (1) or the specific method according to Section 82 (1), as the case may be. This is except for the case where the State agency has proceeded for the selection method or the specific method by other reasons. In such case, the new procurement shall be conducted by providing procurement report under Clause 140.

Clause 148. The provisions under Clause 118 shall be applied to the announcement of the successful tenderer for the design and construction supervision work by the general solicitation notification method *mutatis mutandis*.

Selection Method

Clause 149. When the head of State agency grants approval for report of design or construction supervision work by the Selection method, the following acts shall be carried out:

(1) provide solicitation documents to invite at least three providers whose qualifications meet those specified, except that there are less than three providers whose qualifications meet those specified for such work, to tender proposals by concerning non-mutual benefits among the tenderers and provide a list of the providers receiving the solicitation documents;

(2) submission of proposal envelopes and acceptance of proposal envelopes shall be subject to the provisions under Clause 113 *mutatis mutandis*;

(3) when it comes to the expiration of the acceptance of proposal envelopes, proposal envelopes shall be accepted only from providers to whom the committee has issued solicitation documents. A list of tenderers shall be provided.

After the expiration of the acceptance of proposal envelop, any documents shall be accepted according to the conditions prescribed in the additional solicitation documents from the providers;

(4) when it comes to the expiration of the opening of proposal envelopes, proposal envelopes, and documents submitted by all providers shall be opened. All committee members shall affix their signatures on every page thereof;

(5) review mutual benefits among the tenderers and documents submitted by the providers and select the providers who do not have mutual benefits with other providers with complete, accurate documents and qualifications and proposal that are in line with the conditions specified by the State agency in the solicitation documents.

In the consideration process, the committee may inquire additional facts from any provider, but cannot ask them to amend a material part proposed. If the committee sees that any provider does not possess complete qualifications according to the conditions specified by the State agency in the solicitation documents, the committee shall remove the name of such provider from the selection;

In the case where any service provider incompletely submits required documents, or proposes details that are different from the conditions prescribed in the solicitation document in terms of non-essential contents, but such difference does not disadvantage other service providers or is only a petty offence, the right of such service provider shall not be withdrawn and the process can be further proceeded.

(6) consider proposal of providers meeting the conditions under (5) whose quality and qualifications are beneficial to the State agency and propose for procurement for the providers who achieve the highest quality scores and make them in order of the scores.

In the case where the selected provider obtaining the highest quality scores does not settle into contract with the State agency within the time specified in the documents for construction design work, the committee shall consider the provider obtaining the second highest quality scores;

(7) provide report of consideration results by applying the provisions under Clause 114 (4) *mutatis mutandis*.

Clause 150. When the committee for design or construction supervision work by the selection method has considered the proposals according to Clause 149 and it turns out that there is only one tenderer, or there are several providers tendering proposal, but only one provider is successful, the committee shall propose to the head of State agency through the head officer to dismiss such selection. However, if the committee considers and sees that there is a reasonable cause to continue the process without dismissing the selection, the committee shall negotiate with such provider.

In the case where there are no providers tendering proposals or the proposals tendered are not selected, the committee shall propose to the head of State agency through the head officer to consider dismissing such procurement. However, if the head of State agency considers and sees that a new procurement by the selection method may not be effective, he or she may order to proceed for a new procurement by using the specific method according to Section 82 (1). This is except for the case where the State agency has proceeded for the specific method by other reasons. In such case, the new procurement shall be conducted by providing procurement report under Clause 140.

Clause 151. The provisions under Clause 118 shall be applied to the announcement of successful tenderer for design or construction supervision work by the selection method *mutatis mutandis*.

Specific Method

Clause 152. When the head of State agency grants approval for report of design or construction supervision work under Clause 140, the committee in charge of design or construction supervision work by the specific method shall carry out the following acts:

(1) provide a solicitation document to invite any provider, whose capacities and skills have been noticed and whose qualifications are suitable for the work to be assigned, to tender a proposal;

(2) consider the proposals of the providers to obtain the most suitable, accurate proposal which is beneficial to the state agency and in line with the hiring objectives;

(3) Provide report of consideration results by applying the provisions under Clause 114 (4) *mutatis mutandis*.

Clause 153. The provisions under Clause 118 shall be applied to the notification of successful provider for design or construction supervision work by the specific method *mutatis mutandis*.

Design Competition Method

Clause 154. The officers shall provide documents for construction design work by a design competition method and publish solicitation notification according to the format prescribed by the Policy Committee.

It is permissible, where necessary, to conclude any particular construction design work documents by the design competition method or by the general solicitation notification method with statements or particulars different from those in a document form under paragraph one, provided that key substances thereof correspond to those provided in the contract form and do not place the State agency at disadvantage, except that where a State agency considers that there may be problems involving prejudicial effects or imprecision, it shall refer the construction design work drafts in question to the Office of the Attorney-General for prior consideration and approval.

Clause 155. When the head of State agency grants approval for the construction design work request report under Clause 140, the following acts shall be carried out:

(1) Step 1 design concept competition

(a) the officer shall publish the notifications and documents for construction design work by the design competition method on an information network system of the Comptroller-General's Department and that of the State agency and shall cause the same to be posted openly at the posture place of such State agency for at least 15 consecutive business days by concerning a period of providing explanations (if any) and a period for providers to prepare documents to tender proposals. The Comptroller-General's Department shall submit notifications and documents for construction design work by the design competition method to the State Audit Office of the Kingdom of Thailand via the electronic system.

The distribution of construction design work by the design competition method and documents concerned shall be carried out together with the publication of the notification and documents for construction design work under paragraph one in order for providers wishing to tender proposals to request for construction design work documents from the starting date until the last date of the publication thereof.

In the case where it is necessary to provide explanation regarding the design concept competition, such explanation shall be carried out on any day prior to the tendering proposal date.

Date and time for tendering proposals shall be specified only one business date and time subsequent to the publication of the notifications and documents under paragraph one.

The provisions under Clause 113 shall be applied to the proposals tendered by the design competition method *mutatis mutandis*;

(b) when it comes to the date to open the envelopes, the committee in charge of construction design work by the design competition method shall review documents of all service providers and select the providers who submit complete and correct documents with design concept that is in line with the conditions prescribed in the documents for construction design by the design competition method, and select the providers whose design concept meets the quality criteria and the objectives of the State agency, and make the providers in order of the scores;

(c) review whether the selected providers under (b) have mutual benefits with other providers or not, and select the providers who do not have mutual benefits with the others for further operation in Step 2;

(d) the committee shall report the consideration results and opinions altogether with all the documents received to the head of State agency through the head officers for approval;

(e) when the head of State agency grants approval according to (d), the head of State officer shall publish the name of successful providers of design concept competition under Step 1 on information network systems of the Comptroller-General's Department and of the State agency in accordance with the procedure prescribed by the Comptroller-General's Department and shall cause the same to be posted openly at the posture place of such State agency and inform all providers proposing concept design via electronic mail according to the form prescribed by the Comptroller-General's Department.

(2) Step 2 design competition

(a) all successful providers for design concept competition under Step 1 shall develop their proposed concept into construction model according to the conditions specified by the State agency and deliver such construction model within the time specified and propose names of providers to settle into mutual contract (if any) and names of architect or engineering in all related fields who possess architect or engineering professional license.

In the case where it is necessary to provide explanation regarding the design competition, such explanation shall be carried out on any business day. The State agency shall provide the explanations to all providers no less than 7 business days prior to the day of submission of proposals.

Date and time for tendering proposals shall be specified only one business date and time by concerning a period for the providers to prepare construction models;

(b) when it comes to the date to open proposal envelopes, the committee in charge of construction design work by the design competition method shall review documents of all service providers and select the providers who submit complete and correct documents with design that is in line with the conditions prescribed in the documents for construction design by the design competition method, and select the providers whose design obtains the highest quality scores, and make the providers in order of the scores;

In the case where the selected provider obtaining the highest quality scores does not settle into contract with the State agency within the time specified in the documents for construction design work, the Committee shall consider the provider obtaining the second highest quality scores instead;

(c) provide report of consideration results by applying the provisions under Clause 114 (4) *mutatis mutandis*.

Clause 156. The provisions of Clause 118 shall be applied to the announcement of successful tenderer for construction design work by the design competition method *mutatis mutandis*.

Clause 157. The State agency may specify remuneration for the design competitor under Step 2 who was selected under Clause 155 (2) (b) by concerning appropriation and benefits to the official service. In this regard, the State agency shall also inform of such remuneration in notifications and documents for construction design by the design competition method.

Power to Order for Procurement of Design or Construction Supervision Work

Clause 158. Procurement for design or construction supervision work shall be under the power of persons holding positions with cost estimate as follows:

- (1) head of the State agency, not exceeding 50,000,000 baht;
- (2) persons holding one level higher position, exceeding 50,000,000 baht.

The persons holding one level higher position under paragraph one shall be in accordance with the account attached to this Regulation.

Clause 159. Any State enterprise requiring to specify competent persons and cost estimate for procurement in pursuance of Clause 158 differently from what prescribed in this Regulation shall propose to the Ruling Committee for approval. When the approval is granted, such matter shall be informed to the State Audit Office of the Kingdom of Thailand.

Clause 160. Fees of design or construction supervision work shall be in accordance with the rate specified in the Regulation issued in pursuance of Section 90 paragraph two.

Chapter 5
Settlement of Contract and Guarantee

Part 1
Contract

Clause 161. In signing a contract and amending a contract according to this Regulation shall be the power of the head of State agencies.

Subject to paragraph one, the contract can be signed only after the period for appeals has elapsed according to Section 66 paragraph two.

Clause 162. Apart from consultancy work, settlement of written contract or agreement shall specify a fixed daily penalty at between 0.01-0.20 percent of the price of undelivered supplies. This is except for any contract that requires the whole work to be completed at the same time. In such case, a fixed daily penalty shall be specified at 0.01-0.10 percent of the price of such work but shall not be lower than 100 baht per day. For construction of public utilities that has impact to the traffic, the daily penalty shall be 0.25 percent of the price of such work, but the maximum penalty may be specified according to the criteria prescribed by the Policy Committee.

In settling contract for consultancy work, provided the State agency sees that if penalty is not specified in the contract, there shall be damages caused to the State agency, such State agency or contract provider shall specify the daily penalty at the rate or fixed rate of 0.01-0.10 percent of such work.

For the specification of penalty under paragraph one and paragraph two at any rate, the head of State agency shall concern the price, period of usage and supply specification that may have impact to the way that the contractual party of the State agency may refrain from complying with the contract, or have impact to the traffic, or cause damage to the public interest, as the case may be.

In the case of supplying a series of supply and missing parts of such series shall cause incomplete operation, if the contractual party submits the supply within the time specified in the contract, but there are still parts missing, it shall be deemed that the supply is not submitted within the time specified and the contractual party shall be fined for the whole penalty.

In the case where it is a provision of an item of which the price has included the installation and testing fees, if the supplies have been installed or tested more than the number of days specified in the Regulation, the penalty shall be applied based on daily basis of the total price.

In this regard, the details regarding the penalty shall be clearly indicated in the solicitation documents.

Clause 163. In the case where the State government sees that it is necessary to prescribe penalty apart from that specified under Clause 162, if the penalty is not specified in the contract, there shall be damage to the State agency e.g. information technological relating works or work that is in between the period of guarantee for deficiency and damage from procurement of computer, the committee shall consider to specify such penalty by concerning the importance and natures of the work to be specified, and damage that may cause to the State agency.

Clause 164. The State agency shall submit a copy of written contract or agreement of which the value is at least one million baht to the State Audit Office of the Kingdom of Thailand and the Revenue Department within 30 days from the day of contract or agreement settlement or according to the procedures prescribed by the Comptroller-General's Department.

Clause 165. An amendment to contract or agreement under Section 97 shall be within the scope of original objectives of such contract or agreement. The State agency shall consider a comparison of quality of supplies or work specification, including price of supplies or price according to contract or agreement and supplies to be amended prior to the amendment of the contract or agreement.

In the case where it is a procurement related to strength or technical work, such procurement shall require to be certified by an engineer, architect, and technical engineer, or qualified person who is responsible for or able to certify particular qualifications, plan and construction list, or technical work, as the case may be.

When a person competent to approve procurement, as the case may be, has approved the amendment to the contract or agreement, the head of State agency shall sign in such amended contract or agreement.

Part 2 Guarantee

Tender Guarantee

Clause 166. For the purpose of guaranteeing damage that may cause from the case where the persons tendering proposal, tenderers, or service providers do not comply with the process of procurement or employment of design or construction supervision work, the State agency shall specifies tender guarantee for procurement by electronic price tenders, design or construction supervision work by a general solicitation notification method of which the procurement cost estimate or construction cost estimate exceeds 5,000,000 baht as follows:

For procurement by electronic price tenders, tender guarantee shall be placed by any of the followings:

(1) check or bank draft signed by the bank, which is a check or draft dated of the day the check or draft is paid to the officer, or not exceeding 3 business days prior to such date;

(2) domestic bank guarantee document according to the sample document specified by the Policy Committee;

(3) Government bond;

(4) the guarantee document of capital company or security capital company permitted to operate capital business for commercial and guarantee business according to the Notification of the Bank of Thailand based on the list of capital companies circulated by the Bank of Thailand. The format of document shall be in accordance with the sample of bank guarantee document prescribed by the Policy Committee *mutatis mutandis*.

For design or construction supervision work by a general solicitation notification method, tender guarantee shall be placed by any of the followings:

(1) cash;

(2) check or bank draft signed by the bank, which is a check or draft dated of the day the check or draft is paid to the officer, or not exceeding 3 business days prior to such date;

(3) domestic bank guarantee document according to the sample document specified by the Policy Committee;

(4) the guarantee document of capital company or security capital company permitted to operate capital business for commercial and guarantee business according to the Notification of the Bank of Thailand based on the list of capital companies circulated by the Bank of Thailand. The format of document shall be in accordance with the sample of bank guarantee document prescribed by the Policy Committee *mutatis mutandis*.

(5) Government bond.

In the case where it is a proposal from a foreign country, for international price tenders, guarantee document from the banks in foreign countries that have good evidence and are trustworthy to the head of State agency shall be deemed as a contractual guarantee.

In the case where the persons tendering proposals or tenderers use the tender guarantee under paragraph two (1), (3), or (4), the persons tendering proposals or price tenderers submit such guarantee in the PDF file (Portable Document Format) on the price tendering date. The State agency shall prescribe that the persons tendering proposals or tenderer shall submit the original copy of such document to the State agency for review according to the date and time specified, which must be conducted within 5 business days following the price tendering date. In the case where such act cannot be completed within one day, the State agency shall prescribe to be more than one day within 5 business days following the price tendering date by clearly indicating as conditions in the solicitation documents.

Contractual Guarantee

Clause 167. Contractual guarantee shall be any one of the following:

(1) cash;

(2) check or bank draft signed by the bank, which is a check or draft dated of the day the check or draft is paid to the officer, or not exceeding 3 business days prior to such date;

(3) domestic bank guarantee document according to the sample document specified by the Policy Committee. The guarantee document may be provided in a form of electronic document according to the procedures prescribed by the Comptroller-General Department;

(4) the guarantee document of capital company or security capital company permitted to operate capital business for commercial and guarantee business according to the Notification of the Bank of Thailand based on the list of capital companies circulated by the Bank of Thailand. The format of document shall be in accordance with the sample of bank guarantee document prescribed by the Policy Committee *mutatis mutandis*.

(5) Government bond.

In the case where it is a proposal from a foreign country, for international price tenders, guarantee document from the banks in foreign countries that have good evidence and are trustworthy to the head of State agency shall be deemed as a contractual guarantee.

Clause 168. The value of bidding and contact guarantee shall be specified in an integral number at five percent of the estimation or price of the supply to be procured, as the case may be, with an exception for procurement that the head of State agency considers specially important

In entering into procurement contract with contractual period exceeding one year which does not require guarantee for deficiency and damage for such supplies, such as supplies for consumption, the contractual guarantee shall be specified at five percent of the price of supplies delivered each year during the contract. The contractual guarantee shall be deemed as the guarantee throughout the contractual period. In the case where the price of supplies delivered in the following year is different from that of the previous year, the guarantee shall be amended based on the shifting proportion before the completion of one-year period. In the case where the contractual guarantee needs to be increased, but the contractual party does not provide more guarantee within 15 days before the last delivery of the supplies for such year, the State agency shall reduce payment of supplies of the last delivery substituting the increasing portion of the guarantee.

The determination of guarantee under paragraph one shall be indicated as conditions in the invitation for price tenders or in the contract.

In the case where a price tender or a contractual party provides a guarantee of which the value is higher than that specified in the regulations, solicitation documents, or contract, such guarantee shall be received *mutatis mutandis*.

Clause 169. In the case where the State agency is a price tenderer or contractual party, guarantees shall not be provided.

Clause 170. The State agency shall return guarantees to the tenderers, contractual parties, or sureties according to the criteria as follows:

(1) tender guarantee shall be returned to the tenderer or surety within 15 days from the day the head of State agency approves the selection successful tenderer report, except for not more than 3 tenderers tendering the lowest price as the tender guarantee shall be returned only when contract or agreement has been settled, or the tenderers have relieved from commitment;

(2) contractual guarantee shall be returned to the contractual party or surety without delay and at least must not exceed 15 days from the day the contractual party has relieved from the commitment under the contract.

Procurement that does not require guarantee of deficiency or damage shall return the guarantee to the contractual party or surety at the proportion of supplies that the State agency has received. In this regard, the conditions must be indicated as conditions in the solicitation documents and the contract.

The return of guarantee that is a guarantee of banks, capital companies or securities capital companies, if the tenderer or contractual party does not pick up such document within the time specified above, the original copy of the guarantee document shall be returned to the tenderer or contractual party via registered mail without delay, and the bank, capital company, or securities capital company, surety shall be informed of such delivery. For an electronic guarantee document of a bank, such document shall be returned to the bank which is the issuance of the electronic guarantee through the electronic public procurement system.

Clause 171. In entering into contract, if there are amendments of contract and the cost estimate under the contract has been changed from the original. In the case where the cost estimate increases, the contractual party shall place guarantee of which the value is equivalent to the increasing cost estimate of such guarantee.

If the guarantee placed by the contractual party as a guarantee of performance decreases or is deficient, or its prescription does not cover the liability of the contractual party throughout the contractual period, no matters the reason is, including delay submission of work, the contractual party shall find a new guarantee or additional guarantees to complete the value specified in the contract within the time specified by the State agency.

Advance Payment Guarantee

Clause 172. For the advance payment guarantee under Clause 91 paragraph two or Clause 130 paragraph one, as the case may be, when the State agency deducts the payment to be paid each time to substitute the advance payment or submit a guarantee of which the value is equivalent to that of the payment to be deducted, the contractual party shall request for a return of some parts of advance payment guarantee. In this regard, such matter shall be specified as conditions in the solicitation documents and the contract.

Performance Guarantee

Clause 173. Construction work that the State agency specifies to settle payment based on gradual stages of operations and wishes to deduct performance guarantee at each stage, the deduction shall be based on the rate the State agency specifies for such instalment as the guarantee. In the case where the performance guarantee is deducted not lower than the rate specified by the State agency, the contractual party shall be eligible to request for such performance guarantee back by submitting guarantee or electronic guarantee of domestic backs in replace of money deduction. The period of guarantee may be as prescribed by the employer.

Clause 174. In hiring a consultant from a State agency that involves paying in instalment, the employer shall deduct money paid each time at the rate that is not lower than five percent but not exceed ten percent of the remuneration as performance guarantee. Alternatively, it may prescribe that the consultancy State agency shall use the guarantee or electronic guarantee of domestic bank of which the guarantee period is as specified by the employer in replace of the deducted money. In this regard, such matter shall be specified as conditions in the contract.

Chapter 6**Administration of Contracts and Inspection of Supplies for Acceptance**

Clause 175. The supplies acceptance committee for procurement shall have duties as follows:

(1) inspection of supplies for acceptance shall be conducted at the office of the user of such supplies or a location mutually agreed in the contract or agreement.

In the case where there is no contract or agreement, inspection of supplies for acceptance in other locations must be first approved by the head of State agency;

(2) inspection must be complete and accurate based on the agreeable evidence. For the case there is a scientific or technical testing or experiment, an expert or qualified person specializing in such supplies shall be invited to provide advice, or such supplies may be delivered to the office of such expert or qualified person for testing or inspection.

In the case where the supplies cannot be counted in units, statistical inspection shall be conducted;

(3) inspection shall be conducted on the day the supplier or contractor delivers the supplies and must be complete as soon as possible;

(4) when the inspection is complete, the committee shall accept such supplies and it shall be deemed that such supplier or contractor has completely delivered all the supplies on the day such supplies are delivered. The supplies shall be given to the officer altogether with at least 2 copies of document acknowledging the inspection of acceptance on which signatures affixed. The supplier or contractor and officer shall keep one each for further requisition according to the regulations of the State agency, and the matter shall be reported to the head of the State agency.

In the case where the delivered supplies do not have specifications as indicated in the contract or agreement, such matter shall be reported to the head of the State agency through the head officer for acknowledgement and further order;

(5) in the case where the supplier or contractor delivers correct supplies but incorrect amount, or the amount of supplies is correct, but not all the supplies are correct, if the contract or agreement does not specify otherwise, only correct supplies shall be inspected for acceptance by following the provisions under (4) and the officer shall report such matter to the head of State agency through the head officer without delay to inform the supplier or contractor of such matter within 3 business days from the day such problem is found without prejudice for the State agency to request for a fine from the supplier or contract for such incomplete or incorrect amount of supplies;

(6) inspection of supplies made in a series or unit, if any element is missing and the supplies cannot work properly, it shall be deemed that such supplier or contractor has not delivered such supplies. In general, the head of the State agency shall be reported of such matter to inform the supplier or contractor within 3 business days from the day the problem is found;

(7) in the case where some supplies inspection committee members do not accept supplies by indicating objections to propose to the head of State agency for further consideration and order, if the head of the State agency ordered to accept such supplies, the committee members shall carry out the act under (4) or (5), as the case may be.

Clause 176. Supplies inspection committee for construction works shall have the duties as follows:

(1) review qualifications of the construction supervisor of the contractor to be in line with the Act on Building Controls;

(2) review the performance reports of the contractor and environmental circumstances reported by the work supervisor of the State agency by weekly comparing to the plan and regulations in the contract or agreement, including being acknowledged of matters or consider for a leave of an employee, or suspension of the supervisor, and report to the head of State agency for further operation;

(3) the supplies inspection committee or any committee member entrusted by the supplies inspection committee shall conduct onsite inspection at the location of construction work specified in the contract or agreement at appropriate time and shall provide a record of such inspection for the evidential purpose;

(4) apart from the act under (1) and (2), in the case where there is a doubt or where the plan and regulations in the contract or agreement have slightly shifted or do not be in line with technical principles, the committee shall have power to order for additional amendment or reduce details of work as seen appropriate and according to the technical principles to be in accordance with the plan;

(5) generally, the inspection shall be conducted upon the work delivered by the contractor within 3 business days from the day the Chairperson acknowledges of the work delivery and such inspection shall be complete as soon as possible;

(6) if the work is correct and complete in accordance with the plan and regulations specified in the contract or agreement, it shall be deemed that the contractor has completely delivered the work on the day the contractor delivers such work and shall provide two copies of a document certifying work performance for the whole or each stage, as the case may be, with signatures affixed. The contractor and the officer shall keep one each to proceed for payment requisition according to the Regulations on the Public Payment Requisition and report such matter to the head of the State agency.

In the case where the supplies inspection committee see that the work delivered, whether in whole or in stages, is not in line with the plan and the contract or agreement, the committee shall report the head of State agency for acknowledgement or issuance of order, as the case may be;

(7) in the case where some supplies inspection committee members do not accept supplies by indicating objections to propose to the head of State agency for further consideration and order, if the head of the State agency ordered to accept such supplies, the committee members shall carry out the act under (6).

Clause 177. For the construction work which involves such gradual stages of operations as to require close supervision thereof or which involves instalment payments in accordance with the progress of the work, the head of State agency shall appoint a supervisor who has technical expertise based on the type of construction work from government officials, employees, government officers, university staff, public officers, or employees of State agencies called by other names of such State agency, or government officials, employees, government officers, university staff, public officers, or employees of State agencies called by other names of other State agencies as being approved by the head of State agency. In the case where the construction work requires knowledge and skills of various fields, a supervisor specializing in particular fields or a group of supervisors may be appointed.

The supervisor must possess qualifications as suggested by the designer and usually possess not lower than the vocational certificate level.

In the case where it is necessary to employ a supervision provider to be a supervisor, the employment can be proceeded by following the acts under Chapter 4.

Clause 178. The supervisor shall have duties as follows:

(1) inspect and supervise construction work at the location specified in the contract or agreed to conduct such construction work every day to be in line with the construction plan and the details in the contract. The supervisor may order to change, amend or reduce work as seen appropriate and in accordance with technical principles to be in line with the plan and the contract. If the contractor violates the order, the construction work, either in part or in whole shall be paused, as the case may be, until the contractor complies with the order. Such violation shall be reported to the supplies inspection committee or a person entrusted to be responsible for contract or agreement administration and constructional supply inspection for acceptance without delay;

(2) in the case where the plan or the contract is in conflict, or it is expected that though such work shall be in accordance with the plan and the contract, the final work delivered shall not be strong or in line with good technical principles, or shall not be safe, the supervisor shall order to pause such work and report the supply inspection committee or a person entrusted to be responsible for contract or agreement administration and constructional supply inspection for acceptance without delay;

(3) weekly provide at least 2 records of daily operational conditions of the contractor and circumstance as well as performance or leave and reasons for the leave to report to the supply inspection committee or a person entrusted to be responsible for contract or agreement administration and constructional supply inspection for acceptance and keep to later give to the officer when each phase of work is complete. The records shall be deemed as material official documents to support inspection of responsible persons.

The record of performance of the contractor shall be indicated details of operational procedures and materials used;

(4) on the starting date of the contractor according to the contract and the date specified to deliver work of each phase, the supervisor shall report performance of the contractor whether it is in line with the contract or not to the supply inspection committee or a person entrusted to be responsible for contract or agreement administration and constructional supply inspection for acceptance within 3 business days from the date specified as such.

Clause 179. The supply inspection committee for consultancy work shall have duties as follows:

(1) monitor and tracking consultancy work to be in line with the conditions specified in the contract or agreement;

(2) inspection of consultancy work for acceptance at the office of the hiring parting or any location specified in the contract or agreement;

(3) in general, the inspection of consultancy work for acceptance shall be conducted on the date the consultant delivers such work and the inspection shall be complete as soon as possible;

(4) when the inspection is complete according to the contract or agreement, the committee shall accept such consultancy work and it shall be deemed that such consultant has completely delivered all the works on the day such works are delivered. The works shall be given to the officer altogether with at least 2 copies of document acknowledging the inspection of acceptance on which signatures affixed. The consultant and officer shall keep one each for further requisition according to the regulations of the State agency, and the matter shall be reported to the head of the State agency.

In the case where all of the work or any phase of the work is not in line with the contract or agreement, the committee shall have power to order for additional revision or reduce work details based on the contract, and report the head of State agency through the head office for acknowledgement or further order, as the case may be;

(5) in the case where some supplies inspection committee members do not accept work, such members shall indicate objections to propose to the head of State agency for further consideration and order. If the head of the State agency ordered to accept such supplies, the committee members shall carry out the act under (4).

Clause 180. The supplies inspection committee for design or construction work supervision shall have duties as follows:

(1) inspect work for correctness in accordance with the contract or agreement;

(2) inspect work for acceptance at the office of the hiring party or at any location specified in the contract or agreement;

(3) in general, the inspection of work for acceptance shall be conducted on the date the contractual party delivers such work and the inspection shall be complete as soon as possible;

(4) in the case where the work is deficient or not following the objectives of the State agency due to not aligning with architectural or/and engineering principles, the committee shall inform such provider of design or construction supervision work to solve without delay;

(5) when the inspection is complete according to the contract or agreement, the committee shall accept such consultancy work and it shall be deemed that such consultant has completely delivered all the works on the day such works are delivered. The works shall be given to the officer altogether with at least 2 copies of document acknowledging the inspection of acceptance on which signatures affixed. The consultant and officer shall keep one each for further requisition according to the regulations of the State agency, and the matter shall be reported to the head of the State agency.

In the case where all of the work or any phase of the work is not in line with the contract or agreement, the committee shall have power to order for additional revision or reduce work details based on the contract, and report the head of State agency through the head office for acknowledgement or further order, as the case may be;

(6) in the case where some supplies inspection committee members do not accept work, such members shall indicate objections to propose to the head of State agency for further consideration and order. If the head of the State agency ordered to accept such supplies, the committee members shall carry out the act under (5).

Clause 181. In the case where it is due for the delivery of work and there is penalty arising, the State agency shall inform the contractual party of such penalty arising from the contract or agreement within 7 business days from the day it is due for the delivery. When the contractual party delivers supplies, the State agency shall reserve the right to request for penalty during the acceptance of such supplies.

Clause 182. The waiving or reduction of penalty for a contractual party or the extension of time for performance of a contract or an agreement under Clause 102 in the case where it is an event attributable to a fault or neglect of the State agency, or *force majeure*, or an event in consequence of any circumstance for which the contractual party is not liable under the law, or any other event as prescribed in the Ministerial Regulation that obstruct the

contractual party from deliver supplies or work according to the conditions and date specified in the contract, the State agency shall indicate in the contract or agreement determining that the contractual party shall inform the State agency of such circumstances within 15 days from the day such circumstance ends or as prescribed in the Ministerial Regulation. If the contractual party does not inform the State agency of such circumstance within the time specified, the contractual party shall not be able to claim such circumstance for waiving or reduction of penalty or extension of time, except for the case where it is an event attributable to a fault or neglect of the State agency with obvious evidence, or the State agency has been acknowledged of such circumstance since the beginning.

Clause 183. Apart from terminating of contract or agreement under Section 103, if it appears that the contractual party cannot comply with the contract or agreement and there shall be penalty according to such contract or agreement, if the penalty amount exceed ten percent of the cost estimate of supply, the State agency shall consider to terminate such contract or agreement, with an exception that the contractual party agrees to be liable for the penalty for the State agency without any conditions. In such case, the head of State agency shall consider lessening the termination of contract as necessary.

Clause 184. Substituting to the expiry of the contract, during the guarantee period for deficiency, the head of the agency owning the supplies, or the person entrusted shall be responsible for maintenance and inspection of supplies. This is except that there is no such person owning the supplies or the supplies are owned by several agency. For such case, the head officer shall be responsible for maintenance and inspection of such supplies.

Clause 185. In the case where it appears that the supplies have been worn out within the guarantee period according to the contract, the person responsible for such matter under Clause 184 shall report the head of the State agency of such matter in order to inform the supplier or contractor to provide revision or fixing without delay, and also inform the surety (if any).

Clause 186. Substituting to the execution of Clause 185, in the case where the guarantee period is almost due, the State agency shall consider the deficiency and damage of the supplies in order to prevent damage and return the contractual guarantee thereafter.

Damages

Clause 187. In the case where termination of a contract or an agreement is not made by a State agency or termination of such contract or agreement is made by a State agency without demanding penalty, as the case may be, if the contractual party considers that the State agency is liable for damages, the contractual party may submit an application to the State agency for considering payment of damages under Section 103 paragraph according to the criteria as follows:

- (1) the contractual party submit an application to the contractual State agency within 15 days from the day of the termination;
- (2) application shall be provided in writing with the petitioner's signature affixed, indicating facts and a clear reasonable cause of the petition with attachments of documents concerned;

(3) the State agency must issue a document acknowledging receipt of the application for the evidential purpose and consider the application within 60 days from the day of receipt. If such act cannot be carried out within the time specified, the State agency may submit a request to the head of State agency to extend the period, not exceeding 15 days from the expiry date thereof;

(4) the State agency shall appoint committee in charge of damage consideration carrying out the duties under Clause 189;

(5) The State agency shall give written notification of the result of the consideration to the contractual party within 7 business days from the day the head of State agency approved the consideration results.

When the State agency has given written notification of the result of the consideration, the contractual party dissatisfied therewith shall have the right to initiate and action before the Court for further claiming damages under the contract.

Clause 188. The State agency shall appoint a set of committees called "committee in charge of damage consideration," consisting of 1 Chairperson and at least 2 committee members, from government officials, employees, government officers, university staff, public officers, or employees of State agencies called by other names within such State agency. In the case where it is necessary or for the purpose of making decision, not more than 2 persons may be appointed as committee members.

Clause 189. The committee in charge of damage consideration shall have duties as follows:

- (1) review the details of facts based on the application of the contractual party;
- (2) in the case of necessity, the contractual party or relevant person(s) shall be summoned to provide further details in the related part;
- (3) consider damages and determine the maximum amount of damages (if any);
- (4) provide a report of consideration result under (1) to (3), including opinions, and purpose to the head of State agency.

The consideration of damages under paragraph one shall be based on the criteria prescribed by the Ruling Committee. In the case where the committee sees that the State agency needs to be liable for the damages and the amount of damage is higher than 50,000 baht per time, the State agency shall provide a report and propose it to the Ministry of Finance for further approval. The criteria and report procedures shall be as prescribed by the Ministry of Finance.

Chapter 7

Performance Evaluation of Business Operators

Clause 190. For the purpose of effective selection of tenderers, performance evaluation of business operators under this Chapter shall be conducted.

The performance evaluation of business operators under paragraph one shall consider the capacity to complete the work within the time specified in the contract settled with State agencies. The evaluation shall be based on performance of the contractual party from the day of the execution of this regulation. In this regard, State agencies shall specify date in the solicitation notification and solicitation documents to be extended to business operators for tendering proposal with State agencies in order for the tenderers to know of such performance evaluation conditions.

The performance evaluation of business operators shall be conducted through the electronic public procurement system according to the procedures prescribed by the Comptroller-General's Department.

As deemed expedient, the ministers may issue regulations specifying criteria particularly for the performance evaluation of business operators.

Clause 191. The performance evaluation of business operators under Clause 190, apart from the capacity to complete the work within the time specified, may determine to have performance evaluation for other aspects according to the procedures prescribed by the Comptroller-General's Department by concerning qualities and qualifications beneficial to State agencies for effective selection of proposals.

Chapter 8 Work Abandon

Part 1

Orders Proclaiming Persons as Having Abandoned the Work

Clause 192. State agencies shall not make a contact with persons having abandoned the work whose names are indicated in the list of persons having abandoned the work by the Permanent Secretary of the Ministry of Finance and such list has already been circulated, except that such persons' names are revoked from the list thereof.

State agencies shall not make a contact with persons having abandoned the work under paragraph one, which shall also be applied to persons under Clause 196 paragraph two and paragraph three.

Any natural person or juristic person that is under to be persons having abandoned the work under this part shall have rights to tender proposals to State agencies. However, if the consideration result turns that the Permanent Secretary of the Ministry of Finance has issued an order proclaiming such natural person or juristic person as persons having abandoned the work, the State agencies shall remove the name of such person from the list eligible for procurement selection, or cancel the procurement, or cancel the contract or agreement signed prior to the order of the Permanent Secretary of the Ministry of Finance. This is except for the case where the head of State agency has considered and sees that such person shall be highly beneficial to the State agency. In such case, the head of State agency may not remove the name from the list of persons eligible for procurement selection, or cancel the procurement, or cancel the contract or agreement signed prior to the order of the Permanent Secretary of the Ministry of Finance.

Clause 193. In the case where it appears that a tenderer or a contractor of a State agency carries out an action likely to abandon the work under Clause 109, the head of State agency shall consider such tenderer, contractor, or subcontractor permitted by the State agency to subcontract the work, or consultant, or design or supervision service provider as a person having abandoned the work, as the case may be, and propose its opinions to the Permanent Secretary of the Ministry of Finance for an issuance of order proclaiming such person as a person having abandoned the work without delay.

When the Permanent Secretary of the Ministry of Finance considers after listening to the opinions of the Ruling Committee under Section 29 (5) and sees that such person should be ordered as a person having abandoned the work, the Permanent Secretary shall issue an order proclaiming such person as a person having abandoned the work by indicating the name in the list of persons having abandoned the work and circulate the list to State agencies and inform such person having abandoned the work via the registered mail.

In the case where the Permanent Secretary of the Ministry of Finance sees that such person should not be ordered to be a person having abandoned the work, the State agency must be informed of such consideration result.

Clause 194. In the case where there is later a reasonable cause to suspect that a tenderer or tenderers, whether successful or not, have carried out action that obstructs fair competition or enters into conspiracy, such as presenting inaccurate documents or use a name of other natural persons or juristic persons for the purpose of price tenders, it prescribes that State agencies concerned shall conduct fact inquiries to find out whether such person should be ordered to be a person having abandoned the work or not with a letter to inform the tender of such suspect, asking for clarification of the facts within the time specified by the State agency, but not less than 15 days, from the day of the receipt of such letter thereof.

When the State agency receives clarification from the suspected tenderer under paragraph one, the head of State agency shall consider whether such person should be ordered to be a person having abandoned the work or not.

If the suspected tenderer does not submit clarification within the time specified under paragraph one, it shall be deemed as a reasonable cause to suspect that such tenderer has carried out action that obstructs fair competition or enter into conspiracy, the head of State agency shall propose opinions to the Permanent Secretary of the Ministry of Finance to issue an order proclaiming such person as a person having abandoned the work.

Clause 195. In the case where any tenderer jointly obstructs fair competition or enters into conspiracy, which is not the initiator of such act, provides collaboration that is beneficial to the consideration proceedings of the head of State agency, the head of State agency shall consider for an exemption not to order such person as a person having abandoned the work by indicating reasons in the opinion or order proposals, as the case may be.

Clause 196. In the case where any juristic person is ordered to be a person having abandoned the work under Clause 193, Clause 194, or Clause 195, if such act was committed by the managing partner, managing director, executive, or person competent for the operation of such juristic person, the Permanent Secretary of the Ministry of Finance shall also issue an order proclaiming such person as a person having abandoned the work.

In the case where any juristic person is ordered to be a person having abandoned the work under Clause 193, Clause 194, or Clause 195, the order proclaiming as such shall be effective to other juristic persons conducting the same type of business of which the managing partner, managing director, executive, or person competent for the operation of such juristic person is the same person as the managing partner, managing director, executive, or person competent for the operation of such juristic person of the juristic person ordered to be a person having abandoned the work.

In the case where any natural person is ordered to be a person having abandoned the work under Clause 193, Clause 194, or Clause 195, such order shall be effective on other juristic persons tendering proposal which have such person as the managing partner, managing director, executive, or person competent for the operation of such juristic person.

Clause 197. For the purpose of the execution of this regulation, when there is a reasonable cause to suspect that the acts under Clause 193, Clause 194, and Clause 195 have been carried out, and such State agency has not yet submitted a report to the Permanent Secretary of the Ministry of Finance, the Permanent Secretary of the Ministry of Finance may summon the tenderers or contractors under the reasonable cause of suspect that such persons have carried out action that obstructs fair competition or enters into conspiracy to clarify before the Permanent Secretary with a letter of information informing such suspect of the Permanent Secretary of the Ministry of Finance to such person, asking such person to clarify within the time specified by the Permanent Secretary of the Ministry of Finance, but not less than 15 days from the day of the receipt of the letter.

When the Permanent Secretary receives clarification from the successful tenderer or contractor subject to the reasonable cause of suspect under paragraph one, the Permanent Secretary of the Ministry of Finance shall consider such clarification. If the clarification is unreasonable, the Permanent Secretary of the Ministry of Finance shall consider such person as a person having abandoned the work and inform the consideration result to the State agency.

If the suspected tenderer or contractor under paragraph one does not clarify within the time specified by the Permanent Secretary of the Ministry of Finance, it shall be deemed that there is a reasonable cause to believe that such person has carried out an action that obstructs fair competition and enters into conspiracy, the Permanent Secretary of the Ministry of Finance shall consider such person as a person having abandoned the work and inform the consideration result to the State agency.

Part 2

Revocation of a List of Work Abandoners

Clause 198. Any person ordered to be a person having abandoned the work shall submit a request for revocation of his or her name from the list of persons having abandoned the work by presenting evidence to support the consideration according to the criteria as follows:

(1) Being listed in the list of persons having abandoned the work for at least 2 years. Such person must not be ordered to be a person having abandoned the work due to an action that likely to obstruct fair competition or enter into conspiracy. In this regard, the person requesting for revocation eligible for the revocation under this Clause shall not have evaluation results under Chapter 7 to be a person fails to achieve the criteria and was suspended from tendering proposals or settle agreements with State agencies.

(2) Being listed in the list of persons having abandoned the work for at least 5 years and must not be ordered or circulated to be a person having abandoned due to an action that likely to obstruct fair competition or enter into conspiracy.

Clause 199. The Ruling Committee may propose opinions to the Permanent Secretary of the Ministry of Finance for an order to revoke a list of persons having abandoned the work for persons having abandoned the work whose names were circulated for not less than 10 years from the list thereof.

Clause 200. For any abandoners whose names were revoked from the list of persons having abandoned the work, if such abandoners are ordered proclaiming to be persons having abandoned the work again within 3 years from the day of the revocation, such abandoners shall not be eligible for the revocation of the list under Clause 198 (1), but shall be eligible for the revocation of the list under Clause 198 (2) when the period reaches 8 years from the day being ordered and circulated to be abandoners of the latter time.

Clause 201. Any abandoners wish to use the right to request for revocation of the list of persons having abandoned the work under Clause 198 (1) and Clause 198 (2) shall submit a revocation request to the Permanent Secretary of the Ministry of Finance altogether with evidence concerned to support the consideration. In this regard, the revocation of the list shall be effective only upon the approval of the revocation by the Permanent Secretary of the Ministry of Finance and such order is circulated within State agencies.

Chapter 9 Supply Administration

Part 1 Collection, Record, Requisition

Clause 202. Public supply administration shall be conducted in pursuance of the provisions under this Chapter, except that there are official regulations or laws specifying otherwise.

The supply administration under this Chapter shall not be applied to services, construction work, consultancy work and design or construction supervision work.

Maintenance and Records

Clause 203. When an officer receives a supply, the officer shall conduct as follows:

(1) Indicate in the account or record to control supplies, as the case may be, by categorizing into types and show the lists according to the sample prescribed by the Policy Committee with evidence for the records to support the list.

For supplies in the category of fresh foods, all the fresh foods may be listed in the same account.

(2) Organize, maintain and secure all supplies to align with the details indicated in the account or record.

Requisition of Supplies

Clause 204. For the requisition of supplies from the Supply Department of a State agency, it prescribes that the head of project requiring to use such supplies shall be responsible for the requisition.

Clause 205. For the dispose of supplies, it prescribes that the head of the Supply Department responsible for supply control, or any person entrusted by the head of State agency to be the head of the Supply Department shall be responsible for ordering disposal of supplies.

The person disposing of supplies shall review the accuracy of requisition form and supporting documents (if any) and indicate details in the account or record every time the supplies are disposed and keep the requisition slip as evidence.

Clause 206. In the case where any State agency requires to specify requisition procedures as others, such matter shall be at the discretion of the head of such State agency. The requisition procedures specified must be reported to the Ruling Committee and the State Audit Office of the Kingdom of Thailand.

Part 2
Borrowing

Clause 207. Lending or using of supplies in a business that is not for official benefits shall not be conducted.

Clause 208. For loans for use, such person who borrows shall provide borrowing evidence in writing, indicating reasons and date of return according to the criteria as follows:

(1) for the borrowing between State agencies, such borrowing must be approved by the head of the lending State agency thereof.

(2) for lending of supplies to be used within the owning State agency, such matter must be approved by the head of the department responsible for such supplies. However, if the supplies are to be used outside of the State agency, such matter must be approved by the head of the State agency.

Clause 209. The person loaning for use shall return such supplies in a usable condition. If it is damaged, nonfunctional, or lost, the person borrowing shall need to fix it and be responsible for the expense caused, or compensate such supplies with other supplies that are the same type, size, specifications and quality, or compensate in cash based on the actual price of the supplies during the borrowing period according to the criteria as follows:

(1) central government and provincial government shall be in accordance with the criteria prescribed by the Ministry of Finance;

(2) local government shall be in accordance with the criteria prescribed by the Ministry of Interior, Bangkok Metropolitan, Pattaya City, as the case may be;

(3) other State agency shall be in accordance with the criteria prescribed by such State agency.

Clause 210. Borrowing of supplies for consumption between State agencies shall be conducted only when the borrowing State agency requires for such supplies for an urgent case, which cannot provide by other methods within the limited time, and the lending State agency is able to offer such supplies with written borrowing evidence and without causing any damage to its organization. In general, the borrowing State agency shall return supplies with the same type, kind, and amount to the lending State agency.

Clause 211. When it comes to the expiry date of the borrowing, the lender or a person responsible for the borrowed supplies on behalf of the lender shall follow up such supplies for return within 7 days from the expiry date.

Part 3

Maintenance and Inspection

Maintenance

Clause 212. Prescribing that a State agency shall assign an inspector to maintain supplies under its possession at the usable conditions at all time. Appropriate maintenance plans and maintenance periods should also be arranged.

In the case where damage occurs to a supply, the State agency shall restore it to the usable conditions without delay.

Annual Supply Inspection

Clause 213. Within the last month of every fiscal year, the head of State agency or the head of Supply Department under Clause 205 shall appoint a person responsible for supply inspection, who is not an officer, as deemed necessary, to inspect the account of supplies during the past year and check the balance of supplies as of the last day thereof.

The inspection under paragraph one shall be conducted on the first business day of each fiscal year, whether the transactions are correct, the amount of the balancing supplies is in line with the amount indicated in the account or record, whether the supplies are damaged, deteriorated or lost due to any reason, or any supply is no longer required in such State agency, the results of inspection shall be submitted to the appointing person within 30 business days from the first day of the inspection.

When the appointing person receives a report submitted by the person responsible for the inspection of supplies, one copy of report shall be referred to the head of State agency and one copy shall be submitted to the State Audit Office of the Kingdom of Thailand and submit one copy of the report to the original affiliate (if any).

Clause 214. When the appointing person receives the report submitted by the person responsible for inspection of supplies under Clause 213 and it appears that some supplies are damaged, deteriorated, or lost, or no longer necessary for such State agency, the appointing person shall appoint one set of Fact Inquiry Committee by applying the provisions under Clause 26 and Clause 27 *mutatis mutandis*. This is except for the case where it is obvious that such supplies are deteriorated due to general usage or are naturally lost. In such case, the head of State agency shall consider to proceed the disposal of supplies.

If the consideration results turn out that it requires to find a person to be responsible for such damage, it prescribes that the head of State agency shall operate in accordance with the laws or regulations related to the official affairs or State agency.

Part 4

Disposal of Supplies

Clause 215. After inspection, if any supply is out of necessary, or highly waste of money, the officer shall propose to the head of State agency to order to execution any of the following procedures:

(1) selling; the officer shall sell by auction. However, if selling by auction is not effective, the procedures in respect of purchase shall be applied *mutatis mutandis*, except in the following cases:

(a) a sale of supply of which the purchasing price is not higher than 500,000 baht shall be conducted by the specific method by negotiating price without selling through auction;

(b) a sale to State agencies or foundation organizations under Section 47 (7) of the Revenue Code shall be conducted by the specific method with price negotiation.

(c) a sale of electronic devices, such as mobile phones, tablets to officers of the State that State agencies give for using on duty. When such person leaves such position, or the device is beyond its usage limits, the device shall be sold to such person by the specific method with price negotiation.

Selling by auction shall be in line with the Civil and Commercial Code. The entrusted person shall conduct a price evaluation of assets prior to announcement for auction. In the case where it is a supply that is available in the market, the current market or local price shall be considered at the time of the selling, and there should be a price comparison for appropriation. In the case where it is a supply that is not available in the market, the price of such supply shall be considered based on specifications, types, kinds of supplies and prescription, as well as conditions and locations of such supply. The evaluated price must be proposed to the head of State agency for approval by concerning benefits of State agencies.

The State agency may hire an operator who provides auction service to carry out such operation.

(2) exchange; the exchange must be conducted by following the exchange procedures prescribed in this Regulation.

(3) transfer; such supply shall be transferred to a State agency or foundation organization under Section 47 (7) of the Revenue Code with evidence for delivery of supply;

(4) reproducing or destroying shall be in accordance with the criteria and procedures prescribed by State agencies.

The operation under paragraph one shall be generally complete within 60 days from the day the State agency gives the order.

Clause 216. Money earned from the distribution of supplies shall be in accordance with the Act on Budget or laws concerning finance of specific State agency, or agreement in the part of loans or supporting finance, as the case may be.

Disposable

Clause 217. In the case where a supply is disposed without a person to be liable for or with a person to be liable for but cannot compensate the damages, or the supply still exists, but the act under Clause 215 should not be carried out, for such case, it shall be considered disposable according to the following criteria:

(1) if the purchasing price or obtaining price of supply is not higher than 1,000,000 baht in total, the head of State agency shall consider for approval;

(2) if the purchasing price or obtaining price of supply is higher than 1,000,000 baht, it prescribes to following the below acts:

(a) for central administration and local administration, the Ministry of Finance shall have authority to grant approval;

(b) for local administration, the provincial governor, governor of Bangkok Metropolis, or mayor of Pattaya City, as the case may be, shall have authority to grant approval;

(c) for agencies of other States, competent persons to grant approval shall be as prescribed by such State agency;

Any State enterprise requires to specify budget for supply disposal under paragraph one differently from what prescribed in this Regulation shall propose such budget to the Ruling Committee for approval. When the approval is granted, such matter shall be informed to the State Audit Office of the Kingdom of Thailand.

Disbursement

Clause 218. When the acts under Clause 215 and Clause 217 have been executed, the officer shall remove stocks from the account or record immediately and inform the State Audit Office of the Kingdom of Thailand within 30 days from the day of such removal of stocks.

For supplies that require registration according to the laws, such matter shall be informed to the registrar within the time specified in the law.

Clause 219. In the case where supplies of the State are damaged, deteriorated, or disposed, or no longer necessary for official services, before conducting inspection under Clause 213 and operating carrying out act according the Act on Tort Liability of Officers or this Regulation *mutatis mutandis*, as the case may be, if there are no other regulations particularly specifies, the acts under Clause 215, Clause 216, Clause 217, and Clause 218 shall be carried out *mutatis mutandis*.

Chapter 10 Complaints

Clause 220. Any person who becomes aware that a State agency does not perform its duties in accordance with the criteria and procedures prescribed in the Act on Public Procurement and Supply Administration, Ministerial Regulations, Regulations, or Notification issued in pursuance of the Act on Public Procurement and Supply Administration shall have rights to lodge a complaint to the State agency thereof or to the Appeals Committee, as the case may be.

The lodging of complaint under paragraph one must be conducted within 15 days as from the date of noticing or being able to notice that the State agency does not perform its duties in accordance with the criteria and procedures prescribed in the Act on Public Procurement and Supply Administration, Ministerial Regulations, Regulations, or Notification issued in pursuance of the Act on Public Procurement and Supply Administration.

Clause 221. Lodging of complaint shall be conducted in writing with signature of the lodging person affixed. In the case where the lodging person is a juristic person, signature(s) of the competent director(s) and the seal (if any) must be affixed.

The complaint letter under paragraph one must contain polite messages and clearly indicate facts and reasons for the lodging with attachments of evidence concerned.

Clause 222. In the case where the State agency receives the complaint under Clause 220, the State agency shall consider such complaint and inform the result to the person lodging the complaint without delay, as well as informing the result to the Appeals Committee.

Clause 223. In the case where the complaint under Clause 220 is lodged to the Appeals Committee, the Appeals Committee shall consider such complaint without delay by executing Section 43 paragraph four and inform the result to the person lodging the complaint and the State agency.

The decision of the Ruling Committee shall be deemed final.

The Appeals Committee may specify additional details as seen necessary for the benefits of the operation.

Announced on the 23rd Day of August 2018

Apisak Tantivorawong

Minister of Finance

Attachment**Determination of Categories of Persons Holding One Level Higher Position
In pursuance of the regulation of the Ministry of Finance on Procurement and Supply
Administration, B.E. 2560 (A.D. 2017)**

- (1) Central government equivalent to a department
Person holding one level higher position is Permanent Secretary or Deputy of Bureau, as the case may be.
- (2) Provincial government
Person holding one level higher position is the Permanent Secretary of the original affiliation of the State agency owning the budget.
- (3) Local government
Person holding one level higher position is the Provincial Governor.
- (4) State enterprises
Person holding one level higher position is State Enterprise Committee.
- (5) National university
Person holding one level higher position is the University Council.
- (6) Official sectors directly responsible for the Prime Minister or the Ministers, the Secretariat of the Senate, the Secretariat of the House of Representatives, or Bangkok Metropolitan
Person holding one level higher position is the head of such State agency as a person exercising one level higher power.
- (7) In the cases other than those under (1) – (6)
Persons holding one level higher position are chiefs, supervisors, or superior officers one level higher, as the case may be.
- (8) In the case where there are no chiefs, supervisors, or superior officers, the head of such State agency shall exercise the power of as a person exercising one level higher power.
- (9) Prescribing that the person having charge of the execution of this Regulation shall have the power to issue notifications for amendment to the categories of as a person exercising one level higher power as deemed necessary and appropriate.