

# **Implementing Regulations of Government Tender and Procurement Law**

**Minister of Finance Decision No. 362  
20 *Safar* 1428H / 10 March 2007**

## **Chapter One**

### **Preparation of Tender Documents and Announcement of Tender**

#### **Article 1:**

Prior to putting their works up for public tender or procuring their needs, government authorities shall, through their technical departments or by hiring a consultant, set accurate and detailed terms and technical specifications for the required works, provided that they avoid any reference to types, items or trademarks or setting specifications applicable only to certain trademarks.

Government authorities shall not overstate the specifications, nor exceed the needs and requirements of the project nor the funds allocated thereto. They shall ensure compliance of consultant offices setting the specifications with the same.

#### **Article 2:**

Preference shall be given to nationally manufactured goods, products, services, products of national origin as well as products and services of other countries that are treated on equal basis, in accordance with the rules favoring national products. This shall be provided for in the terms and specifications of works to be executed.

#### **Article 3:**

Government authorities shall update information relating to their projects and works before approving them. They shall review the technical specifications, drawings and plans and make any amendments or corrections prior to putting their works up for public tender or procuring their needs, especially outdated documents or continuously updated specifications of equipment and programs.

**Article 4:**

Before setting designs, drawings and bills of quantities, a Government Authority shall carry out necessary soil tests and probing for execution of projects that require them.

**Article 5:**

- (a) Prior to the tender announcement, a Government Authority shall seek the assistance of the technical department which participated in setting the specifications, or other authorities specialized in pricing, to set estimated guiding prices for the works on the bills of items and quantities relating to the tender in accordance with prevailing market prices and on the basis of previous prices. They shall be submitted sealed and referred to the chairman of the Bid Examination Committee to be opened by the Committee when awarding the tender.
- (b) A Government Authority shall maintain a comprehensive directory for prices of materials and services procured repeatedly, provided that such directory is continuously updated.

**Article 6:**

- (a) A Government Authority shall provide sufficient copies of the tender documents to meet demands of those interested in buying them, and it may not abstain from selling them nor decline to make them available for any reason whatsoever, as long as the period specified for accepting bids is still in effect.
- (b) Copies of the tender documents shall be numbered and shall carry the stamp of the Government Authority.

- (c) A Government Authority shall observe accuracy in setting prices of tender documents so as to make them proportionate to the cost of preparing them. It shall not overprice them so as not to discourage potential tenderers.

**Article 7:**

Prior to procuring their needs or putting their works up for public tender, a Government Authority shall ensure the availability of necessary allocated funds.

**Article 8:**

The tender terms may include a provision that permits splitting the tender at the time of awarding the bid where such split is in the interest of the Government Authority. The tender terms may also include a provision that permits the Government Authority to cancel some of the tender items or reduce them to make them fall within the limits of the funds allocated for the project.

**Article 9:**

Without prejudice to provisions of Article 1 of these Regulations, supply may be carried out on the basis of a sample determined by the Government Authority or suggested by the bidder, provided that it is consistent with the terms and specifications determined by the Government Authority.

**Article 10:**

Government authorities shall announce public tenders in accordance with the following procedures:

- (a) A tender shall be announced in the Official Gazette and two local newspapers at least once, through electronic means , on

the website of Umm Al-Qura Gazette and the website of the advertising authority. The Secretariat of the Council of Chambers of Commerce and Industry shall be provided with an electronic copy of the announcement, provided that the announcement remains posted on those sites until the deadline for submission of bids.

- (b) Announcement abroad shall be published in major newspapers in countries providing the service and by means of international electronic advertising sites in both Arabic and English. Publication of the announcement may be carried out in coordination with the Kingdom embassies abroad, if necessary.
- (c) If the site of the project is located outside the Kingdom, the announcement shall be made both locally and abroad, in accordance with the method of announcement provided for in Paragraphs (a) and (b) of this Article.
- (d) The announcement of the tender shall include clear and comprehensive information about the works announced and shall at least include the following:
  - Name of the advertising authority.
  - Number, description and purpose of tender.
  - Scope of classification.
  - Price of documents and place of sale.
  - Time and place of submitting and opening of bids.
- (e) The interval between the date of the first announcement in the Official Gazette and the deadline for submission of bids may not be less than thirty days, and not less than sixty days in case of projects or works whose estimated costs amount to fifty million riyals or more.
- (f) No particular category of classification may be specified, and no stipulation that tenderers have certain qualification may be made at the time of tender announcement or sale of documents.

**Article 11:**

Works of continuing execution such as maintenance, cleaning, operation, catering services and the like shall be put up for public tender at the beginning of the final year of the existing contract at the latest.

**Chapter Two**  
**Conditions to be Satisfied by Bidders**

**Article 12:**

- (a) Those interested in dealing with government authorities shall possess the following documents and licenses:
- (1) Commercial register or official license in the field of works subject of the bid.
  - (2) Classification certificate in the field of works subject of the bid, if the value of the bid requires classification in accordance with provisions of the Contractor Classification Law.
  - (3) Certificate of payment of *zakat* or tax.
  - (4) Certificate of registration of the firm with the General Organization for Social Insurance and payment of insurance contributions.
  - (5) Certificate of membership of the Chamber of Commerce.
  - (6) Investment license if the tenderer is licensed in accordance with the Foreign Investment Law.
  - (7) Certificate of satisfying the legal percentage of nationalization of jobs (Saudization).

- (b) Documents and licenses referred to in Paragraph (a) of this Article shall be valid.

**Article 13:**

In accordance with provisions of the Law and these Regulations, it is prohibited to deal with the following persons:

- (1) Government employees with the exception of:
  - (a) Non-commercial activities if they are permitted to pursue them.
  - (b) Purchase of books authored by them whether directly from them or from publishers or bookstores.
  - (c) Commissioning them to do artistic works or buying their intellectual property rights or works.
  - (d) Participating in public auctions if the articles to be purchased are for their personal use.
- (2) Persons imprisoned for crimes during contracting procedures.
- (3) Persons boycotted in accordance with the Law until they are rehabilitated.
- (4) Bankrupts or those who file for bankruptcy or proven insolvent or an order has been issued to put them under receivership.
- (5) Companies liquidated or dissolved.
- (6) Persons under eighteen years of age.
- (7) Persons lacking competency.
- (8) Persons boycotted by competent authorities or pursuant to a judicial ruling until expiration of the boycott period.
- (9)

## **Chapter Three Submission of Bids**

### **Article 14:**

Bids shall be submitted sealed to the Government Authority, by registered mail or delivered by hand, using original forms received from the Government Authority and carrying its stamp so as to ensure their confidentiality and non-opening. Each bidder shall be given a receipt showing the date and time of submission. Bids submitted or received by the Government Authority after expiration of the period specified for submission of bids shall not be considered.

### **Article 15:**

Use of electronic means for preparation of tender documents and submission of bids referred to in Article 10 of the Law shall be in accordance with the following:

- (a) Preparation of complete tender documents or any part thereof such as bills of quantities shall be on compact discs or floppy discs or the like, which can be opened, read and their data completed but their contents can not be changed.

A tenderer shall prepare his bid on the copy he received, put his prices on the bill of quantities and deliver the same to the Government Authority along with the other documents of his bid.

- (b) Preparing tender documents and receiving bids electronically, using electronic signatures.
- (c) Electronic means shall be used in matters referred to in Paragraphs (a) and (b) of this Article, in accordance with the electronic signature rules approved by the Ministry of Finance for inviting and receiving government tenders.
- (d)

**Article 16:**

A tenderer shall observe the classification of works subject of the tender, taking into consideration the financial limits of his classification degree. Non-complying bids shall be excluded.

**Article 17:**

Prior to submitting his bid, a bidder proposing to execute the works shall explore the nature of the works subject of the tender and the execution circumstances. He shall be aware of all information and details pertaining to the works and what may affect the categories of his tender as well as the risks of his obligations. The Government Authority shall furnish tenderers with necessary clarifications and information about the works to be executed and inform each tenderer, upon his request, of the scale of the project and of some of the general information about it, which would enable him to assess the works before buying the tender documents.

**Article 18:**

A bid may be submitted jointly by several contractors in accordance with the terms of Classification of Joint Contractors referred to in the Contractor Classification Law, taking into consideration the following:

- (1) The joint relationship shall exist prior to submission of the bid and in accordance with an agreement among the parties and certified by an authority having the power of authentication and certification, such as the Chamber of Commerce and Industry.
- (2) The joint agreement shall include an obligation by the joint parties to execute jointly or severally all works and services put up for tender.
- (3) The joint agreement shall specify the legal representative of the two parties before the Government Authority for

completion of contracting procedures, conclusion of the contract and the responsibility for signatures and correspondence with the Government Authority.

- (4) Bid documents and papers shall be stamped and signed by all joint parties. The original agreement shall be enclosed with the bid.
- (5) None of the joint parties shall submit a bid severally or jointly with another tenderer for the same project.
- (6) A joint agreement may not be amended after submission without the approval of the Government Authority.

**Article 19:**

A tenderer shall not submit a tandem or an alternative bid unless the tender terms provide for the submission of an alternative bid in accordance with specific terms and specifications drafted by the Authority for alternative bids. In this case, the Authority is bound to award the bid to the lowest submitted bid that complies with the terms and specifications.

**Article 20:**

- (a) A tenderer shall submit his bid in accordance with the terms and specifications and the bills of quantities approved by the Government Authority. He may not introduce any amendment or make any reservation or cancel any of the tender items or specifications. Any inconsistent bid shall be excluded.
- (b) Unit and total bid prices shall be recorded in the bills of quantities in figures and words in the local currency unless another currency is stipulated.
- (c) A bidder may not amend, erase or blot out any thing on the price list. Any correction made by the bidder shall be rewritten in figures and words, signed and stamped.

- (d) If the price categories amended, erased or blotted out exceed 10% of the price list, the bid may be excluded.
- (e) A bidder may not omit or leave out any of the tender items un-priced unless permitted by the tender terms.

**Article 21:**

A bidder shall state in his bid whether the items to be procured are nationally manufactured or produced or are the products of another country.

**Article 22:**

- (a) A bid shall be submitted in an official letter specifying total prices and any increase or decrease thereon.
- (b) A bid shall carry the signature of the bidder. If the bidder is a company or an establishment, it shall carry the signature of its legal representative. The bid and all its attachments shall carry the stamp of the bidder.
- (c) The bid shall be accompanied by the original preliminary guarantee. Any inconsistent bid shall be excluded.
- (d) The bid shall be accompanied by copies of all documents referred to in Article 12 of these Regulations.
- (e) If a bidder fails to submit with his bid any of the documents referred to in Paragraph (d) of this Article despite being in his possession at the time of submitting his bid, or if the document submitted has expired, he may be granted a period determined by the Bid Examination Committee to submit such documents within the time specified for awarding the bid. If they are not submitted within the specified time, his bid shall be excluded.
- (f) An additional copy of the bills of quantities as well as total and unit price lists identical to the original and carrying the stamp of the bidder shall be submitted with the bid, provided

that such copy remains with the Bid Examination Committee pending completion of tender analysis.

**Article 23:**

A bidder may withdraw his bid before the expiration of the bid submission period.

## **Chapter Four Opening of Sealed-Bids**

**Article 24:**

- (a) The minister or head of the independent agency shall issue a decision to form a committee or more for opening sealed-bids in accordance with the provisions of Article 14 of the Law.

The decision shall designate a vice chairman to act on behalf of the chairman in his absence.

- (b) The minister or head of the independent agency may delegate the power to form committees for opening sealed-bids at branches and departments affiliated with the ministry or the independent agency.

**Article 25:**

Sealed-bids shall be opened on the specified time and date, provided that the Authority takes into consideration receipt of the daily mail (regular and electronic) delivered to it on the last date for submission of bids.

The date of opening sealed-bids may not be later than the day following the deadline for submitting bids. The committee shall complete opening of all sealed-bids in the same meeting.

**Article 26:**

Without prejudice to the provisions of Article 25 of these Regulations and Article 15 of the Law, the period for accepting bids may be extended and opening of sealed-bids may be postponed in the following cases:

- (1) If it appears that the statutory period for submission of bids as specified in Article 10 Paragraph (e) of these Regulations is not given in full. The Authority shall announce the extension of the period for accepting bids and the postponement of the opening of sealed-bids so as to complete this period in accordance with the procedures of announcing public tenders, provided that buyers of the bid documents are notified of that in writing.
- (2) If there are acceptable grounds for extending the period for accepting bids as when material errors in the bills of quantities or in the tender terms are discovered or there is a justified request by the majority of buyers of the bid documents acceptable to the Government Authority or in case no bids are submitted.

Extension of the period for accepting bids and postponement of the opening of sealed-bids for a suitable period shall be announced in accordance with the procedures for announcing public tenders, provided that buyers of the bid documents are notified of that in writing.

- (3) If the Sealed-bid Opening Committee is not able to perform its duties for acceptable reasons, the time of opening sealed-bids shall be postponed for the required and necessary period. The tenderers shall be notified of that in writing. In this case, no new bids may be accepted during the period of postponement.

#### **Article 27:**

- (a) The Sealed-bid Opening Committee shall ensure the integrity of the sealed-bids and their conformity to the form specified

- by the Law and these Regulations. It shall state in its minutes the number of bids submitted and give to each bid a serial number in the form of a normal fraction, the numerator of which is the number of the bid and denominator is the sum of bids submitted.
- (b) The Committee shall announce to the bidders present or their representatives, the name of the bidder, his total price and any increase or decrease thereon in the original bid letter.
  - (c) The Chairman of the Committee and all members shall list the samples, the specifications of the equipment and materials catalogues submitted with the bid, sign the original bid letter, the bills of quantities, the bank guarantee, the certificates accompanying the bid and the minutes in which the Committee record its procedures.
  - (d) The Committee shall record the contents of sealed-bids opened by it and any amendment, correction or blotting out of prices. It shall list the un-priced items or those whose total and unit prices are not recorded in figures and words.
  - (e) The Sealed-bid Opening Committee may not exclude any bid or request bidders to correct errors or set right the comments made on their bids.  
  
It may not accept any bid, envelopes, letters or samples submitted by the bidders during the meeting for opening sealed-bids.
  - (f) Upon completing its works, the Sealed-bid Opening Committee shall refer its minutes and the tender documents to the Bid Examination Committee within a period not exceeding the period specified under Article 15 of the Law.

## **Chapter Five**

### **Examination of Bids**

#### **Article 28:**

- (a) The minister or head of the independent agency shall issue a decision to form a committee or more for examination of bids in accordance with the provisions of Article 16 of the Law. Said decision shall designate a vice chairman to act on his behalf in his absence.

The meeting of the committee shall not be valid unless attended by the financial controller.

- (b) The minister or head of the independent agency may delegate the power to form committees for examination of bids at branches and departments affiliated with the ministry or the independent agency.

#### **Article 29:**

The Bid Examination Committee shall recommend awarding the work to the lowest bidder and the best in technical terms, which complies with the terms and specifications, and it shall exclude bids not complying with the terms and specifications in accordance with the provisions of the Law and these Regulations.

#### **Article 30:**

The Bid Examination Committee, the other procurement committees and the technical analysis committees shall be bound by the technical and statutory standards of tender analysis, and shall determine the technical and financial ability of the tenderer, as stipulated under the provisions of the Law and these Regulations.

No bid shall be excluded on technical grounds as long as it complies with the terms and specifications and conforms to the provisions of the Law and these Regulations.

**Article 31:**

- (a) Without prejudice to equal opportunity and treatment of tenderers, the Bid Examination Committee may request tenderers to clarify any data or obscurity in their tenders, provided this does not result in a change of substantial matters including price or in rendering a tender inconsistent with the terms and specifications into an acceptable one.
- (b) Technical Analysis Committees or departments in charge of tenders and procurements in government authorities may not communicate with bidders with respect to the provisions of Paragraph (a) of this Article except with the prior approval of the Bid Examination Committee.

**Article 32:**

- (a) If the tenderer does not provide prices for some items, the Bid Examination Committee, without prejudice to its right to exclude the bid, may consider the unpriced items covered by the total value of the bid, and the tenderer shall be deemed to have accepted this condition when submitting his bid.
- (b) In supply contracts, a tenderer shall be considered not having submitted a bid for the unpriced items and his bid shall be excluded if splitting of the tender is not permitted under the tender terms.
- (c) In case the contractor fails to execute the items covered by the total value of the bid, they shall be executed at his expense or an amount equal to their cost shall be deducted on the basis of the tenderers' average price of item or the price estimated by the Bid Examination Committee in case of a single bid or in case all tenderers fail to price the items in question.

- (d) If a Government Authority decides not to execute any of the items covered by the total value of the contract, an amount equal to its cost shall be deducted in accordance with the method of pricing referred to in Paragraph (c) of this Article.

**Article 33:**

- (a) The Bid Examination Committee shall review the bill of quantities and prices stated in the bid, whether unit or total prices, and make necessary material corrections.
- (b) If there is a discrepancy between prices stated in words and price stated in figures, the prices stated in words shall prevail, and in case of a discrepancy between the unit price and the total price, the unit price shall prevail.
- (c) If there is evidence that the price is not correct in accordance with the correction method provided for in Paragraph (b) of this Article, the Bid Examination Committee, after ascertaining the financial equilibrium of prices of the items and comparing the price with similar prices in the bid and other bids, the market price and the estimated prices, shall adopt the price stated in the bid proven to be correct.
- (d) The Bid Examination Committee may recommend the exclusion of a bid if miscalculation in prices, after being corrected in accordance with the provisions of this Article, results in an increase or decrease of more than 10% of the total value of the bid.

**Article 34:**

- (a) The Bid Examination Committee shall ascertain that the price of the lowest bid complying with the terms and specification

is fair, guided by previous prices, market prices and estimated guiding prices of the tender.

- (b) If the bid prices exceed the allocated funds because the prices exceed the estimated prices and market prices, negotiations shall first be made to reduce the bid to the prevailing price and then negotiations shall be made to cancel or reduce some items in accordance with Article 21 of the Law.

**Article 35:**

A bid based on reducing a percentage or a certain amount from the lowest bid shall be excluded.

**Article 36:**

If two bids or more become equal in prices after correction, a Government Authority may split the tender among equal bids if splitting is permitted under the tender terms. If splitting is not provided for, the lowest price among equal bids shall be determined through a closed sealed-bid tender.

**Article 37:**

Without prejudice to provisions of Article 21 of the Law, the Bid Examination Committee, before recommending the exclusion of under priced bids, shall take the following into consideration:

- (a) Ascertaining that the estimated guiding prices of the works are fair and compatible with prevailing market prices at the time of bidding.
- (b) Ascertaining the technical expertise of the bidder and the similar works executed by him.
- (c) Reviewing the financial position of the bidder to ensure his ability and financial capacity.

- (d) Inquiring about the bases and standards upon which prices are determined by the bidder.
- (e) If the Bid Examination Committee is unanimously convinced of the inability of the bidder, or if his bid is under priced as to affect the fulfillment of his obligations, it shall recommend the exclusion of the bid. However, if it appears that the bidder is qualified and experienced and the prices submitted by him, albeit low, cover the cost of execution, a recommendation to award the bid to him shall be made.

### **Article 38:**

Without prejudice to provisions of Article 23 of the Law, the Bid Examination Committee shall, before recommending the exclusion of a bidder whose contractual obligations appear to be beyond his financial or technical capabilities, take the following into consideration:

- (a) Ascertaining the volume of the bidder's obligations in relation to the contracts he is executing for the Government Authority or other authorities, the standard of execution and whether he can execute the project subject of the tender in addition to existing contracts.
- (b) Ascertaining his technical expertise and financial capabilities in accordance with the provisions of Paragraphs (b) and (c) of Article 37 of these Regulations.
- (c) The exclusion shall be based on acceptable substantial grounds, taking into account the interest of the Government Authority, pursuant to a technical report prepared by it.
- (d) If the Bid Examination Committee is convinced that the abilities of the bidder do not permit assigning him other works that may affect the execution of his obligations, it may recommend his exclusion from the tender.

**Article 39:**

- (a) Amounts paid for tender documents shall be refunded to bidders if the tender is cancelled for a reason attributable to the Government Authority, as when the tender is cancelled for public interest before awarding the bid or because its procedures violate the provisions of the Law or because of errors in the terms and specifications, and also if the Government Authority finds the bids submitted to be over priced or exceeding the funds allocated for the project.
- (b) Amounts paid for tender documents shall not be refunded if cancellation takes place after the opening of sealed-bids, except to a tenderer who has submitted a bid. In all cases, the amount paid shall not be refunded to a tenderer until he returns the purchased documents.

**Article 40:**

An excluded bidder shall be informed of the grounds for exclusion by an official letter, upon his request.

**Article 41:**

- (a) If a Government Authority is unable to award the bid during the validity period of tenders, it shall notify bidders of its desire to extend the validity period of their bids for another ninety days.
- (b) Bidders who agree to the extension shall extend their guarantees and inform the Government Authority accordingly within two weeks from the date of the extension notice. Anyone who fails to respond during this period shall be considered not agreeing to extend his bid and his preliminary guarantee shall be returned to him.

## **Chapter Six**

### **Conclusion of Contracts and Execution Periods**

#### **Article 42:**

- (a) The execution period of service contracts of continuing execution shall be proportionate to the costs allocated for the contract in the budget, provided that the contract term does not exceed five years in accordance with provisions of Article 28, Paragraph (a) of the Law.
- (b) Agreement shall be made in advance with the Ministry of Finance in relation to contracts whose execution requires more than five years.
- (c) The summer vacation period shall be excluded in contracts of cleaning, maintenance and other services in relation to educational institutions and the like. The number of workers and unnecessary elements of the contract shall be reduced if these institutions carry out limited activities during such period.

#### **Article 43:**

- (a) After submission of the final guarantee, the Government Authority shall fix a date for signing the contract. If the contractor fails to appear on the specified date without acceptable justification, he shall be notified by a registered letter. If he fails to sign the contract within fifteen days from the notification date, the works shall be withdrawn from him in accordance with the provision of Article 53 of the Law.
- (b) In contracts that require insurance, the Government Authority shall specify in its contracts the terms and validity period of the insurance policy and the specified date for submission.
- (c)

**Article 44:**

- (a) The contract shall be drafted of at least four copies: one for the contractor, one for the execution supervisor, one for the accounts department and one for the General Auditing Bureau.
- (b) The Department of *Zakat* and Income shall be provided with information it requests about the contract, including:
  - Name and address of the contractor.
  - Subject matter, total value and financial terms of the contract.
  - Commencement and completion dates.
  - Any amendments to the contract.

**Article 45:**

- (a) In public work contracts, the work site shall be handed over within the period referred to in Article 30, Paragraph (b) of the Law.
- (b) In service contracts of continuing execution in which commencement of work needs preparations for providing the service continuously and without interruption, the work site shall be preliminarily handed over before the expiration of the period of the current contract to enable the contractor to prepare and be ready for the works in coordination with the contractor of the current contract, and then the site shall be handed over for commencement of execution of the contract after expiration of the previous contract.

**Article 46:**

- (a) In public work contracts, if the contractor delays, procrastinates or refuses to receive the work site, he shall be notified by a registered letter. If he fails to receive the site

within fifteen days from the notification date, the Government Authority shall prepare minutes of constructive hand-over of the site and notify the contractor, warning him of the need to start execution within fifteen days from the notification date. If this period expires without him starting work, the works may be withdrawn from him in accordance with the provisions of Article 53 of the Law.

- (b) If the contractor claims that obstacles prevent him from receiving the work site but the Government Authority is not convinced of that, then he may not refuse to receive it. If he has reservations regarding the site, he shall record them in the minutes of the site hand-over.
- (c) In service contracts of continuing execution, if the contractor delays to receive the work site, he shall be notified. If he fails to receive the site within fifteen days from the notification date, the works shall be withdrawn in accordance with the provisions of Article 53 of the Law.

#### **Article 47:**

Prior to approving the assignment of a contract or any part thereof, a Government Authority shall take the following into consideration:

- (a) Reasons for assignment and whether there are other contracts previously assigned by the contractor, pursuant to a statement to be submitted by the contractor to the Government Authority.
- (b) Assignment shall be in accordance with an agreement concluded by the two parties to specify their obligations towards the Government Authority that owns the project.

The agreement shall not be deemed valid unless the Government Authority approves the agreement and assignment.

- (c) Assignment shall not be detrimental to the project, as a result of executing it at unduly low prices.
- (d) The contractor to whom the assignment is made shall satisfy the terms of contracting with the Government and shall be classified in the field and category of the works assigned to him.

**Article 48:**

In public work contracts, a contractor shall be responsible for reviewing the architectural and technical designs in details. He shall, immediately upon discovering them, notify the Government Authority of technical errors affecting safety of constructions or errors he finds in specifications or plans. He shall also review the reports and recommendations relating to soil tests. However, this shall not relieve the consultant designer or supervisor from their contractual obligations.

**Article 49:**

A contractor may not refuse to carry out his obligations on grounds that the Government Authority is in default of its obligations.

## **Chapter Seven Bank Guarantees**

### **First: Terms of Preliminary Guarantees**

**Article 50:**

- (a) The tender terms shall provide for the percentage of the preliminary guarantee.

- (b) A bid accompanied by an incomplete preliminary guarantee may not be accepted regardless of the percentage of the shortage. Fractions of a riyal shall not be considered a shortage in the guarantee, and the guarantee shall be in ratio to the total value of the contract before review and correction.
- (c) The preliminary guarantee shall be valid for a period not less than ninety days from the date specified for the opening of sealed-bids. Inconsistent bids shall be excluded regardless of the period of shortage.
- (d) The Government Authority shall request the extension of the preliminary guarantee of the successful bidder in case its validity period expires before submitting the final guarantee.
- (e) The preliminary guarantees shall be returned to excluded bidders after awarding the bid and also in case of cancellation of tender or upon expiration of the tender validity period, unless the bidder expresses his desire to continue to be bound by his bid in accordance with Article 41 of these Regulations.
- (f) The Government Authority, at its discretion and at the request of bidders, may release their preliminary guarantees before awarding the bid if it appears, after the sealed-bids are opened and prices are revealed, that the prices of these bids are high or inconsistent with the terms and specifications, in a manner that precludes their awarding.

## **Second: Terms of Final Guarantees**

### **Article 51:**

- (a) The period specified for submission of the final guarantee referred to in Article 33, Paragraph (a) of the Law shall be observed. The submission of the final guarantee shall not be necessary if the contractor delivers all items awarded to him and the Government Authority makes a final acceptance of them within the final guarantee submission period or delivers part of them and this part is accepted and its price is sufficient

to cover the value of the final guarantee, provided that the part covering the value of the final guarantee is not paid except after the contractor performs his obligations.

- (b) In public work contracts, the final guarantee validity period shall be extended if the contractor delays the execution of maintenance works and the warranty until the expiration of the warranty year referred to in Article 107 of these Regulations.
- (c) The contractor shall not be required to submit a final guarantee in case he is assigned additional works.

### **Third: Terms of Advance Payment Guarantees**

#### **Article 52:**

The advance payment guarantee shall be equal to its value and valid until recovery of the full payment. The Government Authority shall notify the bank issuing the guarantee to reduce its value by a percentage equal to the amount of the advance payment recovered in accordance with the claims for payment and on the date of deduction, without the request of the contractor.

### **Fourth: Extension of Guarantees**

#### **Article 53:**

- (a) The Government Authority shall extend the guarantee validity period prior to its expiration if the grounds specified for extending the validity of the guarantee exist, in accordance with the Law, these Regulations and the terms of the contracts.
- (b) The Government Authority shall address the extension request directly to the bank and provide the contractor with a copy thereof. The extension shall be for the necessary period required. The extension request shall state that if the bank fails

to complete the extension procedures prior to expiry of the guarantee validity period, it shall immediately pay the value of the guarantee to the Government Authority.

## **Fifth: Confiscation of Guarantees**

### **Article 54:**

- (a) Where there are causes justifying confiscation of the contractor's bank guarantee in accordance with the Law, these Regulations and the contract terms, the Government Authority shall refer the matter to the Bid Examination Committee or the Procurement Committee as the case may be to study the case and submit a reasoned recommendation to the official authorized to award the bid, taking into consideration the consequences of confiscation and the guarantee validity period.
- (b) The confiscation request shall be limited to the guarantee relating to the project in which the contractor defaults to carry out his obligations and shall not extend to confiscation of guarantees relating to other projects whether with one or several government authorities. The guarantee may not be confiscated for reasons other than those for which the guarantee is submitted.
- (c) When the preliminary guarantee is confiscated in split tenders, the confiscation shall be limited to part of the value of the guarantee proportionate to the value of the works awarded to the contractor.
- (d) If the Government Authority decides to confiscate the guarantee, it shall explicitly instruct the issuing bank to confiscate the guarantee, using the expression "confiscation of the guarantee". The confiscation request shall be addressed to

the bank directly, and the bank shall immediately respond to the request.

## **Sixth: General Provisions Relating to Guarantees**

### **Article 55:**

- (a) If the guarantee is issued by a foreign bank through a local bank in accordance with Article 34, Paragraph (b) of the Law, the Government Authority shall instruct the local bank to observe the terms and rules of the bank guarantees specified by the Law and these Regulations.
- (b) The guarantee may be issued by several banks, provided that each bank pays a certain percentage of the value of the guarantee.
- (c) The guarantee shall be payable at the first request by the Government Authority, with no need for a judicial ruling or a resolution by an arbitration tribunal.
- (d) The guarantee shall be unconditional and irrevocable and its value shall be free from any deductions relating to taxes, fees or other expenses.
- (e) The Government Authority shall maintain registers for monitoring guarantees submitted by contractors and following up procedures for requesting extension of their validity, confiscation or release.

### **Article 56:**

- (a) Provisions, forms and terms of guarantees, referred to in the Law and these Regulations, shall apply to all guarantees required by government authorities in accordance with their provisions, including guarantees required in public auctions for the sale of movables or lease of real properties or

investment thereof, in cases not regulated by a special provision.

- (b) The form and wording of bank guarantees approved by the Ministry of Finance in accordance with the provisions of the Law and these Regulations shall be observed.

## **Seventh: Security Deposit**

### **Article 57:**

The security deposit referred to in Article 34, Paragraph (c) of the Law shall be submitted in accordance with the following:

- (a) The amount of the security deposit shall be delivered to the cashier of the Government Authority against a receipt for the amount.
- (b) These amounts shall not be deposited into the cash account or entered into the financial records and shall be ready at the request of the Committee Supervising Execution of Works which shall expend such amounts with the approval of the head of the department at the Government Authority subject of the contract.
- (c) The Government Authority shall notify the contractor to immediately offset the amount expended. If he procrastinates, the sum shall be deducted from his entitlements.
- (d) The security deposit may not be used or confiscated for purposes other than those for which it is allocated.
- (e) The security deposit or the remainder thereof shall be refunded to the contractor after completion of the contract execution against the receipt delivered to the contractor.
- (f) The amount of the security deposit may be deposited in an account with the Saudi Arabian Monetary Agency or in a bank in accordance with the financial instructions of the budget and accounts.

## **Chapter Eight Increase and Decrease of Contractor's Obligations**

### **Article 58:**

The Government Authority, in exercising its powers to increase or decrease the contractor's obligations or make any amendment to or change in the works contracted for, shall take the following into consideration:

- (1) The additional works shall be subject of the contract and not outside its scope.
- (2) The amendments or changes necessary for the works shall serve the interest of the facility, provided that this does not result in violation of the terms and specifications or in a change in the nature of the contract or its financial equilibrium.
- (3) Ensuring availability of funds necessary to cover the value of the additional works before instructing the contractor to execute them.
- (4) If the additional works have no similar items or quantities in the contract, they shall be referred to the Bid Examination Committee or the Procurement Committee, as the case may be, to study the assignment of these works and the reasonableness of the prices submitted by the contractor. If the contractor disagrees with the decision of the committee, said works shall be contracted for with other contractors, in accordance with the provisions of the Law and these Regulations.
- (5) Additional works may not be ordered after the final hand-over of the works subject of the contract.
- (6) All orders relating to increase or decrease of the contractor's obligations, the periods entitled to for the additional works

and the change orders shall be issued by the official authorized to award the bid.

**Article 59:**

The contractor may not execute any works or services not covered by the quantities and items of the contract unless instructed to do so in writing. Otherwise, the contractor shall not be entitled to the value of works executed.

**Article 60:**

The term of service contracts of continuing execution such as maintenance, cleaning, operation and catering services may be extended by not more than 10% of the total contract value, provided that this percentage is not exhausted in executing additional items or quantities under the contract.

**Article 61:**

In direct purchase contracts provided for in Article 44 of the Law and contracts exempted from public tender provided for in Article 47 of the Law, the contractor may be assigned additional works of not more than 10% of the contract value, in accordance with the terms governing additional work orders.

**Chapter Nine  
Payment of Entitlements**

**Article 62:**

The advance payment of contractors' entitlements shall be paid in accordance with the provisions of Article 38 of the Law, taking the following into consideration:

- (1) Ascertaining the availability of the necessary cash in the allocated fund before stipulating for payment of the advance payment in the tender terms.
- (2) The advance payment shall be paid after the contractor submits the advance payment guarantee and shall be deducted from his entitlements in installments at a rate equal to the percentage of the advance payment from the value of each claim for payment, starting with the first claim.
- (3) An advance payment may not be paid at the renewal or extension of existing contracts or when assigning additional works.
- (4) Criteria relating to the advance payment guarantee referred to in Article 38 of the Law and Article 52 of these Regulations shall be adhered to.

**Article 63:**

Contractors' entitlements shall be paid according to the works performed after deducting penalties and other deductions in accordance with the contracting terms. The period of payment shall not exceed thirty days from the date of approval of the payment order or the cheque by the financial controller.

**Article 64:**

The value of foreign contracts may be paid by letters of credit in accordance with the regulations governing letters of credit approved by the Ministry of Finance.

**Article 65:**

In public work contract, settlement shall be made on the basis of actual measurements of quantities, items and numbers executed.

**Article 66:**

Without prejudice to provisions of Article 40 of the Law, the final claim for payment shall be paid after the contractor executes all his contractual obligations and submits the following certificates:

- (1) A certificate from the Department of *Zakat* and Income proving payment of *zakat* or tax due.
- (2) A certificate from the General Organization of Social Insurance proving the registration of the establishment with the Organization and payment of insurance contributions.
- (3) The certificates to be submitted in accordance with the approved contract forms.

**Article 67:**

The contractor may assign payments due to him under the contract with the approval of the contracting Government Authority and in accordance with the form of assignment approved by the Ministry of Finance without prejudice to the provisions of the contract and the rights of the Government Authority or other government authorities against the contractor.

**Chapter Ten**  
**Rules of Direct Purchase**

**Article 68:**

Without prejudice to provisions of Articles 44, 45, and 46 of the Law, government authorities shall assess urgent cases that do not endure the delay of public tender procedures, taking into consideration the interest of the facility, the circumstances of execution and the quantity and type of works required to be performed.

**Article 69:**

Works of continuing execution such as contracts of maintenance, cleaning, operation and catering, transport services, all works procured periodically and repeatedly and public works for which preparation, terms, specifications and plans are worked out before their execution shall not be considered urgent cases which may be procured by direct purchase except where such works satisfy the direct purchase terms specified under the provision of the Law and these Regulations.

**Article 70:**

In case of direct purchase, the opportunity shall be given to as many dealers as possible, so as not to restrict the transactions of the Government Authority to a limited number of them or deal continuously with certain companies or establishments. The Government Authority shall keep lists of establishments and companies interested in registering to provide their services in different works.

**Article 71:**

In case the Government Authority desires to meet its needs that are procured by direct purchase through electronic means of purchase in accordance with Article 45, Paragraph (d) of the Law, the criteria set by the Ministry of Finance shall be observed.

**Chapter Eleven**  
**Procurements and Works**  
**Exempted from Public Tenders**

**Article 72:**

Government authorities desiring to procure goods, constructions or services referred to in Article 47, Paragraph (d) of the Law which are not found except with one supplier, contractor or producer shall take the following into consideration:

- (1) The Authority is in an urgent need to obtain the goods, services or constructions and there is no reasonable substitute which can be obtained from other sources.
- (2) The announcement shall be made in accordance with the procedures of advertising public tenders to make sure that the goods, services or constructions are not available except with one producer or supplier and also through official commercial sources, data and information bases available with government authorities or other related authorities.
- (3) The price is reasonable; otherwise, acceptable substitutes shall be sought.

**Article 73:**

Unless otherwise provided for by a special provision, works exempted from public tenders referred to in Article 47 of the Law shall be governed by the procedures of public tenders provided for in the Law and these Regulations.

## **Chapter Twelve**

### **Meeting Needs by Renting or Trading-in of Machinery and Equipment**

#### **First: Renting of Equipment, Machinery and Programs**

##### **Article 74:**

Government authorities desiring to meet some of their needs, such as equipment and computer hardware and software, by renting shall take the following into consideration:

- (1) Renting shall be more beneficial to the Government Authority than purchasing.
- (2) Assessment of the need for renting shall be based on a technical report prepared by a technical specialized committee and approved by the official authorized to award the bid.
- (3) Equipment and requisites rented shall be insured by the renter or under his guarantee during the rent period. In all cases, he shall be obliged to maintain them during the rent period.
- (4) The rent period shall be proportionate to the contract costs allocated in the budget, provided that it does not exceed five years.

#### **Second: Trading-in of Machinery and Equipment**

##### **Article 75:**

Government authorities desiring to trade-in equipment and machinery in their possession for new ones and pay the difference in value shall take the following into consideration:

- (1) Expiry of the presumed life-span of the equipment or that they are either subject to continuous upgrading or the cost of their maintenance and spare parts are high compared with the cost of the new equipment and their maintenance.
- (2) Exchange shall save more funds for the public treasury than sale.
- (3) A technical committee shall be formed from the Government Authority to examine the old equipment and prepare a technical report on them covering the points mentioned in Paragraphs (a) and (b) of this Article, stating their purchase date, purchase price, present condition and estimated value.
- (4) The terms and specifications of the new equipment put up for tender shall guarantee the estimated value of the old equipment and tendering shall be in relation to the value of the new equipment.
- (5) The relevant item in the Government Authority's allocated fund shall permit deduction of the full cost of the new asset.
- (6) The total cost of the new asset shall be deducted from the allocated fund, and the value of the old asset shall be recorded as revenue from government sales and the supplier shall be paid the old asset plus the difference in value.

#### **Article 76:**

The needs of the Government Authority met by renting or by trading-in of equipment and machinery for new ones shall be put up for public tender and may be met by direct purchase if their cost does not exceed one million riyals, and they satisfy the direct purchase terms.

## **Chapter Thirteen Penalties**

### **Article 77:**

In supply contracts, if the supplier delays execution of his obligations, a penalty of 1% of the value of delayed items for each week shall be deducted, provided that the total penalty does not exceed 6% of the contract total value.

### **Article 78:**

- (a) In case of purchase orders of immediate delivery which do not specify a certain period, the delay penalty shall be imposed after one week lapse from the date of the purchase order.
- (b) The penalty may not be imposed for delay periods of less than one week.

### **Article 79:**

In supervision contracts, if a consultant delays provision of a supervision team or defaults in execution of his obligations, he shall be subject to a penalty to be determined in the contract, provided that the total penalty does not exceed 10% of the total value of the contract.

### **Article 80:**

If a contractor delays or defaults in execution of his obligations in contracts of designs, preparation of studies, drafting of specifications, plans, technical works and services of accountants, lawyers and legal counselors, he shall be subject to a penalty to be determined in the

contract, provided that the total penalty does not exceed 10% of the total value of the contract.

**Article 81:**

If a contractor defaults in execution of his obligations in contracts of service of continuing execution such as maintenance, cleaning, operation, catering services, transportation and manufacture, he shall be subject to a penalty to be determined in the contract, provided that the total penalty does not exceed 10% of the total value of the contract.

**Article 82:**

When assessing penalties in contracts referred to in Articles 79, 80 and 81 of these Regulations, government authorities shall provide in the tender terms and in the contract terms for the method of imposing the penalty in such a way as to cover all aspects of execution default or delay. Imposition of the penalty shall be gradual and proportionate to the degree of violation, whether it is a lump sum or at a specified percentage of the value of the item subject of the default or in another manner compatible with the nature of said item.

**Article 83:**

In addition to the imposition of the penalty in contracts referred to in Articles 79, 80 and 81 of these Regulations, the value of the items and services not executed or executed in violation of the contract, regardless of their value, shall be deducted as if they were undelivered items. This includes under performance, such as poor execution and shortage in the number of technicians, workers, materials or equipment required for execution.

#### **Article 84:**

In public work contracts, if the contractor delays completion and delivery of work on the specified date for delivery, he shall be subject to a delay penalty calculated on the basis of the average daily cost of the project, by dividing the value of the contract by its period in accordance with the following:

- (a) A penalty for the first part of the delay period at the rate of one quarter of the average daily cost for each day of delay until it amounts to fifteen days or 10% of the contract term, whichever is longer.
- (b) A penalty for the second part of the delay period at the rate of half the average daily cost for each day of delay until the two parts amount to thirty days or 15% of the contract term, whichever is longer.
- (c) A penalty for the third part of the delay period at the rate of the full average daily cost for each day of delay following the longest of the two periods provided for in Paragraph (b) of this Article.

The sum of the penalties imposed may not exceed 10% of the contract value.

- (d) If a Government Authority deems that the delayed part does not preclude full use of the work on the specified completion date, does not cause interruption in using any other facility and does not adversely affect the work completed, then the penalty shall be limited to the value of the works delayed, in accordance with the method of calculation of the penalty for the original works, provided that the total penalty does not exceed 10% of the value of the works delayed.

#### **Article 85:**

In mixed contracts, if a contractor defaults or delays execution of his obligations, the penalty shall be imposed on each part according to

its nature in such a way as not to exceed the maximum penalty under the Law, provided that the parts of the contract are separated from each other as to the period of execution, delivery and total value.

**Article 86:**

In case a project is withdrawn from a contractor after expiration of the contract term, a delay penalty shall be imposed for the period following expiration of the contract term until the date of withdrawal.

**Article 87:**

The delay or default penalty shall be deducted from the contractor's entitlements when they become due. In public work contracts, the Government Authority may be content with deducting not more than 10% from the value of each claim for payment against the delay penalty, and the remainder of the penalty shall be deducted from the final claim for payment.

**Article 88:**

A contractor shall bear the supervision costs of the project during the delay period in accordance with the costs of the contract of the consultant supervising execution. If supervision is carried out by the Government Authority itself, the costs of supervision during the delay period shall be calculated in accordance with the following formula:

$$\text{Supervision fees during the delay period} = \text{Value of the execution contract} \times \frac{1}{100} \times \frac{\text{Delay period in days}}{\text{Contract term in days}}$$

**Article 89:**

If the consultant employees supervise more than one project for the Government Authority at the same time, the fees of said employees for the delayed project shall be calculated in accordance with the following formula:

$$\text{Monthly supervision fees for the delayed project} = \frac{\text{Monthly salary of the employees} \times \text{Project value}}{\text{Total value of projects supervised by the consultant undelivered}}$$

After determining the full monthly supervision fees of the project, the costs of supervision shall be deducted from the contractor's entitlements according to the delay period.

**Article 90:**

If a contract is extended, the contractor shall be relieved from the supervision costs during the extension period.

**Article 91:**

If the original contract term expires and the contractor does not complete execution, the Government Authority shall reconsider the number of the employees of the consultant supervising execution and agree with him as to the size and cost of the supervision team according to the current stage of the project and the quantity and type of the remaining works.

## **Chapter Fourteen**

### **Extension of Contracts and Relief from Delay Penalty**

#### **Article 92:**

A Government Authority may not issue a decision extending the contract or notify the contractor thereof in cases other than those specified under Article 52 of the Law, unless agreed upon with the Ministry of Finance.

Allowing the contractor to complete the work while imposing the penalty shall not be considered extension relieved from the penalty.

#### **Article 93:**

Extension of the contract and relief of the contractor from the penalty shall not be considered in cases specified under Article 51 of the Law, except after the preliminary hand-over of works or delivery of items in supply contracts.

#### **Article 94:**

- (a) A Government Authority, prior to requesting the approval of the Ministry of Finance to extend the contract in cases specified in Article 51 of the Law, shall have a specialized committee review the technical and legal aspects of the extension request to determine the causes of delay and the periods due for each cause individually and refer its report to the Bid Examination Committee.
- (b) The extension request shall be referred to the Ministry of Finance accompanied with the following documents:
  - (1) A copy of the contract documents.

- (2) A copy of the site hand-over minutes or purchase order in supply contracts.
- (3) The original letter of completion of works submitted by the contractor showing the number and date of record with the Government Authority.
- (4) All documents submitted by the contractor or relied upon by the Government Authority in its study, accompanied with a copy of the technical report referred to in Paragraph (a) of this Article.
- (5) A copy of preliminary hand-over minutes, inspection minutes or partial hand-over minutes if any and documents of provisional delivery in supply transactions.
- (6) A copy of notices to the contractor to suspend works or to perform additional works if any.
- (7) Minutes of the Bid Examination Committee referred to in Paragraph (a) of this Article, provided that they include the grounds cited by the Committee in its recommendations, approved by the competent minister or head of the independent agency.

**Article 95:**

Orders to suspend works or part thereof shall be issued by the official authorized to award the bid. The suspension order shall be concurrent with the actual suspension period. The contractor shall be notified accordingly by a letter specifying the date of commencement of suspension of works or part thereof. He shall also be notified to resume works when the causes of suspension cease to exist.

**Article 96:**

Without prejudice to Article 52, Paragraph (b) of the Law, the contractor shall be compensated for the whole period of total

suspension by an equal period. If suspension is partial, he shall be compensated by a period proportionate to the effect of the suspended part on the progress of the project, pursuant to a technical report prepared by the Government Authority.

**Article 97:**

For each consecutive thirty days of total suspension, a contractor shall be compensated by a period of three days for the purpose of preparation to resume works, provided that the total periods of compensation do not exceed forty five days.

**Chapter Fifteen**  
**Withdrawal of Works from the Contractor**

**Article 98:**

Works shall be withdrawn from a contractor pursuant to a decision by the competent minister or head of the independent agency based on a recommendation by the Bid Examination Committee or the Procurement Committee as the case may be, and the contractor shall be notified thereof by a registered letter.

**Article 99:**

A Government Authority shall withhold the entitlements of a contractor from whom works are withdrawn and extend the guarantee submitted by him to remain valid until a final decision to confiscate it is made, so as to cover the Government Authority's claims against the contractor until the final settlement of accounts for the project is made.

**Article 100:**

If a Government Authority decides to execute the works at the expense of the contractor, execution shall be in accordance with the terms and specifications agreed upon with the contractor from whom works are withdrawn. The works withdrawn shall be executed at the expense of the contractor by one of the following methods:

- (a) To agree with the second next bidder to execute the works for the same prices agreed upon with the first bidder. If he disagrees, negotiations shall be conducted with other bidders in sequence. If contract prices are not reached, negotiations shall be conducted with all bidders in sequence to execute the works for not more than the prevailing prices.
- (b) If the Government Authority is unable to execute the works in accordance with Paragraph (a) of this Article, they shall be executed by direct purchase, if their value is within the limits of such power and for not more than the prevailing prices.
- (c) If the Government Authority is unable to execute the works in accordance with paragraphs (a) and (b) of this Article, withdrawn works shall be put up for public tender in accordance with the provisions of the Law and these Regulations.
- (d) If the withdrawn works relate to procurement contracts which are exempted from public tender, they shall be executed at the expense of the contractor in accordance with the method of their purchase specified under Article 47 of the Law.
- (e) If the value of withdrawn works does not exceed one hundred thousand riyals, the Government Authority may procure them in the manner it deems appropriate for not more than the prevailing prices.

**Article 101:**

- (a) Minutes shall be prepared jointly with the contractor from whom the works are withdrawn or his representative to record the state of the project at the time of withdrawal and

the tools, materials and equipment on the site. If the contractor or his representative fails to attend after being notified, he shall not have the right to object to the contents of the minutes.

- (b) The contracting Authority shall have the right to seize the materials and equipment on the site. The contractor from whom works are withdrawn may recover his equipment and machinery after settlement of his account and payment of the amounts due.
- (c) The contracting Authority shall have the right to use the materials and equipment to complete execution of withdrawn works after establishing their state in accordance with the provisions of Paragraph (a) of this Article, provided that the value of the materials and the equivalent rent for using the equipment are assessed in accordance with prevailing prices.

**Article 102:**

The contractor from whom works are withdrawn shall bear all resulting differences in cost, in case the works are executed at his expense.

**Article 103:**

A Government Authority may manage the project or works contracted for by itself or assign them to a consultant office, if it deems it to be more in the interest of the project than withdrawal.

#### **Article 104:**

If a contractor dies and his heirs do not desire to continue with the execution of the contract in accordance with the provisions of Article 53, Paragraph (e) of the Law, the contract shall be rescinded and all works executed and materials on the site shall be recorded in accordance with minutes signed by the agent or representative of the heirs. The final guarantee shall be released after settlement of all rights and obligations under the contract.

### **Chapter Sixteen Delivery of Works in Public Work Contracts and Service Contracts**

#### **Article 105:**

In public work contracts, if the contract term expires and the contractor fails to hand over the works, the Authority shall form a technical committee to inspect the works and prepare minutes jointly with the contractor to determine the works executed, the percentage of completion and the causes and obstacles that delayed the execution of works.

#### **Article 106:**

In public work contracts, works shall be preliminarily handed over after the contractor gives notice of completion. The Government Authority shall form a committee to commence inspection and hand-over within fifteen days from the date of receipt of the contractor's notice. If the Authority fails to accept the project for reasons not attributable to the contractor, such as factors that prevent operation or testing or the unavailability of electric power or for other reasons that fall within the Authority's responsibilities, then inspection minutes shall be prepared jointly with the contractor or his representative to list all completed works of the projects.

### **Article 107:**

Without prejudice to provisions of Article 76 of the Law, a project in public work contracts shall remain under the contractor's warranty for not less than one year as from the preliminary hand-over. This period shall begin as to the unfinished works of the project if any from the date of their acceptance.

### **Article 108:**

- (a) A contractor shall, during the warranty year referred to in Article 107 of these Regulations, maintain, repair and replace defects that appear in the materials used or defects in execution. The Authority's acceptance of works without reservations or discovery of shortcomings or materials inconsistent with the specifications and not rectified during the preliminary hand-over shall not relieve the contractor from his obligation to guarantee and maintain them. If he fails to adhere to such obligations, the works shall be executed at his expense within the prevailing prices after being given a notice in the manner the Authority deems appropriate.
- (b) The warranty and maintenance referred to in Paragraph (a) of this Article shall not cover periodical or normal maintenance works resulting from use, unless this is attributable to a defect in materials or execution in accordance with technical principles.

### **Article 109:**

In public work contracts, final acceptance of works shall take place after expiration of the warranty and maintenance period referred to in Article 107 of these Regulations and after the contractor's fulfillment of his obligations and hand-over of plans and specifications of equipment and machinery as well as documents

relating to the project in accordance with the public work contract form.

**Article 110:**

In contracts of continuing execution, the Authority shall form a technical committee for inspecting works and accepting them after expiration of the contract term, using minutes signed by the contractor or his representative. If there is any default or shortcoming in the execution of works, the contractor shall complete their execution. If he fails to comply, the works shall be executed at his expense within prevailing prices, after being given a notice in the manner the Authority deems appropriate.

**Chapter Seventeen  
Receipt of Supplied Items**

**Article 111:**

Without prejudice to the Rules and Procedures of Government Warehouses, the contractor shall deliver items to the Government Authority's warehouses or locations specified for delivery under the contract.

**Article 112:**

The Authority shall provisionally receive items requiring inspection against a provisional receipt showing the items supplied. The date of the provisional receipt of items, when accepted, shall be considered the date of final receipt.

**Article 113:**

The supplier shall be notified of the meeting date of the Inspection and Receipt Committee in order to attend the procedures of

inspection and final receipt. The Committee's decision to accept or reject the items shall be considered effective as soon as it is approved by the authorized official.

**Article 114:**

If the Inspection Committee rejects one or more of the items supplied, the supplier shall be notified by a registered letter of the rejected items, grounds for rejection and the necessity to remove them within seven days and shall supply a substitute. The Authority shall not be responsible for loss or damage to the items after expiration of the period specified for their removal.

**Article 115:**

If a supplier requests a repeat of the analysis of the items rejected for non-conformity to specifications or the approved sample and his request is accepted, he shall bear the cost of analysis, unless the result is in his favor.

## **Chapter Eighteen Sale of Movable**

**Article 116:**

Without prejudice to the provisions of Articles 55 to 59 of the Law and the provisions of the Rules and Procedures of Government Warehouses, a Government Authority shall form a committee of not less than three members to assess the value of the items and movables to be sold, taking into consideration the condition of the items, their cost, presumed life-span and other factors affecting price assessment. If the Government Authority lacks sufficient experience, it may seek the assistance of an assessor with experience in the field of the items to be sold.

### **Article 117:**

The price estimates shall be placed in a sealed envelope to be opened only by the Chairman of the Sales Committee in the presence of its members, after opening the sealed-bids or the end of the public auction.

### **Article 118:**

- (a) The Government Authority shall form a committee of not less than three members to carry out the public auction or to open the sealed-bids and examine the offers of items to be sold in sealed-bid auction.
- (b) The committee shall ensure the integrity of the sealed-bids, the bidding documents and the guarantees submitted, review the prices and announce to the bidders present or their representatives the bidding prices.
- (c) The Committee shall complete the procedures of bidding, determine the best bid that conforms to the bid terms and refer its minutes to the authorized official to approve the awarding of the bid.
- (d) In case of public auction, the committee shall, at the end of the auction, prepare minutes showing the bidding procedures, price of the successful bidder and the guarantee submitted by him and shall refer its minutes to the authorized official to approve the awarding of the bid.

### **Article 119:**

If the bidding prices fall short of price estimates by more than 15%, the bidding shall be announced again after re-assessment. If no reasonable price is obtained, the items may be sold or disposed of in accordance with the provisions of Article 58 of the Law.

**Article 120:**

If the items or movables are perishable if stored, they may be sold in accordance with the provisions of Article 56 of the Law.

**Article 121:**

The bid shall be awarded within a period not more than thirty days from the date of the opening of sealed-bids or from the end of the public auction. If this period expires without deciding on the bid, the bidder may retract his bid and recover his guarantee in accordance with a letter submitted to the Authority within ten days from the expiration of the period specified for deciding on the bid. Any bidder who fails to retract his bid during this period shall be deemed to consent to continue with his bid.

**Article 122:**

The successful bidder shall pay its value within ten days from the day on which he is notified of the awarding of the bid. If he fails to pay, he shall be notified by a registered letter. If he fails to pay within fifteen days from the notification date, his guarantee shall be confiscated and negotiations shall be conducted with other bidders in sequence to reach the price of the successful bidder. If said price is not reached, the tender shall be announced again.

**Article 123:**

After payment of the price of the items and movables sold, the purchaser shall remove what he purchased within a period not exceeding fifteen days from the date of payment. If he fails to do so, he shall be notified by a registered letter to remove them within a similar period, and if he fails to remove them, the guarantee submitted by him shall not be released until he removes them in

accordance with the provisions of Article 57 of the Law. He may be required to pay storage fees.

The Government Authority shall not bear any responsibility for the loss or damage to the items and movables sold, after the expiration of the period specified for their removal.

#### **Article 124:**

Assistance of licensed intermediaries may be sought to carry out public auction against a commission paid by the purchaser which does not exceed the customary commission and not more than 2.5% of the value of the sales.

### **Chapter Nineteen Rules for Leasing and Investment of Government Real Estates**

#### **Article 125:**

Government authorities may lease or invest government real estates, whether lands or buildings, that fall within their jurisdiction, such as commercial stores, residential buildings, advertisement sites and sites of vending machines, automatic teller machines and others. The Government Authority shall determine the investment location in investment projects in coordination with the Ministry of Finance Department of State Properties.

#### **Article 126:**

In case of a major investment project or a project of technological and technical nature, leasing and investment shall be announced in accordance with the Rules and Procedures of Announcing Public Tenders, in addition to inviting relevant investors and notifying the

Secretariat of the Council of the Chambers of Commerce and Industry.

**Article 127:**

The Government Authority, prior to announcing public tenders, shall prepare documents, terms and specifications of leasing and investment which shall include all information relating to bidding, such as general terms of the contract, quantities and type of works, constructions and facilities to be erected on the site as well as the period of the lease or investment.

**Article 128:**

Lease or investment contracts may not be concluded with persons boycotted in accordance with the provisions of Article 13 of these Regulations.

**Article 129:**

A Government Authority shall assess the minimum rent or returns of investment in accordance with prevailing prices, taking into consideration factors affecting assessment of rent or investment returns based on minutes prepared by a specialized technical committee formed by the Authority for this purpose, of not less than three members in addition to a member from the Ministry of Finance Department of State Properties. The assessment shall be placed in a sealed envelope to be opened only by the Chairman of the Lease and Investment Bid Examination Committee in the presence of all its members.

**Article 130:**

Subject to the provisions of the Law and these Regulations, government authorities may conclude lease and investment contracts

with each other as well as with public institutions and companies owned by the State or which the State owns not less than 51% of their capital by direct agreement after the leasing Authority assesses the rent and investment returns in accordance with the provisions of Article 129 of these Regulations.

**Article 131:**

Government authorities may, after agreement with the Ministry of Finance, designate spaces on their premises for public benefit associations and charities to carry on their activities or offer humanitarian services.

**Article 132:**

Lease or investment offers shall be submitted on the original documents received from the Government Authority in sealed-bids. The bidder shall satisfy all terms of the lease or investment offered for public bidding.

**Article 133:**

- (a) The bid shall be accompanied by a bank guarantee equal to 5% of the total value of the overall investment cost. In case of leasing without investment, the guarantee shall be equal to 15% of the annual rent. The guarantees shall be returned to unsuccessful bidders after awarding the bid.
- (b) In investment contracts, the percentage of the bank guarantee may be reduced to 15% of the annual rent after completion of structural work.

**Article 134:**

The Authority shall form a committee of not less than three members in addition to its chairman, for opening lease and investment sealed-bids. The committee shall carry out its duty in accordance with the procedures specified for the committee of opening sealed-bids in public tenders. The committee shall be formed pursuant to a decision by the competent minister or head of the independent agency or whomever he delegates. The committee shall be reconstituted every three years.

**Article 135:**

- (a) Government authorities shall form a committee of not less than three members in addition to its chairman whose rank shall not be lower than "Grade Twelve" or its equivalent to examine lease and investment public bids. One of the committee's members shall be from the Ministry of Finance. Said committee shall be responsible for examination and analysis of bids and shall submit its recommendations to the official authorized to award the bid.
- (b) The decision forming the committee shall be issued by the minister or head of the independent agency or whomever he delegates. The committee shall be reconstituted every three years.
- (c) The committee shall carry out its duty and issue its recommendations in accordance with the procedures specified for the Bid Examination Committee in public tenders.

**Article 136:**

If a public bidding is announced but only one bid is submitted, the announcement shall be repeated. If still only one bid is submitted, the procedure for awarding the bid shall be completed with the approval of the authorized official.

### **Article 137:**

- (a) Leasing may be carried out by public auction, either at the location of the real estate or on the premises of the Government Authority. Said Government Authority shall form a committee to conduct the auction, of not less than three members including a member from the Ministry of Finance.
- (b) The committee shall prepare minutes recording the procedures of the bidding and the highest bid and refer the minutes to the Lease and Investment Bid Examination Committee. In public bidding, cash or bank drafts may be accepted as guarantees. Awarding the bid shall be carried out in accordance with Sealed Bidding Rules.

### **Article 138:**

If a potential investor or lessee submits an offer to invest or lease a site not yet put for investment and the Authority deems the investment or leasing of the site suitable, a tender shall be announced and the investor shall be invited to submit his bid in accordance with the bidding terms. If no other bids are submitted, the tender shall be re-announced, and if still no other bids are submitted, the bid shall be awarded in accordance with the Sole Bid Provision referred to in Article 136 of these Regulations.

### **Article 139:**

When determining the lease and investment term, the size of the project and the returns to be realized for the Authority therefrom shall be taken into consideration, provided that the term does not exceed the following:

- (a) Five years for leasing without investment.
- (b) Fifteen years for sites the investment of which requires constructions.

- (c) Twenty years for major investment projects, with the approval of the Ministry of Finance.

**Article 140:**

If the investor or lessee withdraws after the awarding of the bid, his guarantee shall be confiscated after notifying him by a registered letter and the lapse of fifteen days from the notification date. Negotiations shall be carried out with the next bidders in sequence in order to reach the price of the successful bidder. If such price is not obtained, the tender shall be re-announced.

If the investor or lessee withdraws after the opening of the sealed-bids and before awarding the bid, a portion of his guarantee equal to 2% of the total bid value shall be confiscated.

**Article 141:**

The annual rent shall be fully paid within ten days from the beginning of each contracting year. Agreement may be made to pay the rent of the years specified in the contract in one payment.

**Article 142:**

Prior to concluding lease or investment contracts whose annual returns amount to fifty thousand riyals or more, the Ministry of Finance shall be provided with a copy of such contracts for review.

**Article 143:**

The guarantee submitted by the lessee or investor shall not be released until the expiration of the contract term and the hand-over of the real estate in accordance with the contract terms.

#### **Article 144:**

The lessee or investor shall bear the cost of water, electricity, telephone and services provided by the Authority, such as cleaning, maintenance and security. If the site is connected with the services of the leasing Authority and it is not possible to separate such service from those of the public facility, the Authority, when offering the site for investment or lease, shall assess the cost of these services and provide for them in the bidding terms upon announcement as well as in contract terms so as to be paid along with the annual rent or monthly as the case may be.

#### **Article 145:**

If leasing or investment is in return for constructing facilities whose ownership reverts to the Government Authority after the expiration of the contract term in accordance with provisions of Article 62 of the Law, then in addition to the rules governing lease and investment referred to in these Regulations, the following shall be taken into consideration:

- (1) The Government Authority shall set the terms, specifications, plans and quantity of works offered for investment.
- (2) The Authority shall approve the designs and the detailed architectural plans of the projects prepared by the investor. It shall have the right to oversee execution wholly or partly.
- (3) The investor shall maintain the project and make repairs therein until handing the project over upon the expiration of the investment contract.
- (4) The Authority shall receive the project completely upon expiration of the investment term. This shall include facilities, buildings, fixtures, furniture as well as movable equipment and machinery.

#### **Article 146:**

Ownership of all facilities constructed by the investor or lessee shall revert to the leasing Authority which may instruct him to remove them at its discretion. What is invested in accordance with provisions of Article 62 of the Law shall be excepted, unless executed in violation of the terms and specifications approved by the Authority.

#### **Article 147:**

The Government Authority may rescind the contract and confiscate the bank guarantee and claim compensation from the investor or lessee for damage in any of the following cases:

- (1) If the investor or lessee fails to perform his obligations which require the provision of a certain service or the construction of some facilities for the Government Authority after the lapse of three months or 10% of the investment or lease term whichever is longer, without justification acceptable to the Authority.
- (2) If he fails to pay the rent within the specified period after notification and the lapse of fifteen days from the notification date.
- (3) If he uses the site for an activity other than the activity agreed upon in the investment or lease contract or assigns it to a third party without the written approval of the Authority, after being notified to rectify the situation and the lapse of fifteen days from the notification date.
- (4) One of the reasons provided for in Article 53, Paragraphs (a) and (d) of the Law.

#### **Article 148:**

If the lessee dies and his heirs do not desire to continue with the contract, the contract shall be rescinded and the guarantee submitted by him shall be released after settlement of all rights and obligations under the contract.

If the deceased is an investor who constructed facilities on the site and his heirs do not desire to continue with the contract, the contract shall be referred to the competent judicial authority to determine the effects of the recession of the contract.

#### **Article 149:**

The Government Authority, upon the approval of the competent minister or head of the independent agency and the Ministry of Finance, may cancel the contract before the expiration of the lease or investment term on grounds of public interest after giving notice to the lessee or investor and the lapse of three months from the notification date. Joint minutes shall be prepared with the lessee or investor to list the assets on the site and the facilities constructed. The contract shall be referred to the competent judicial authority to determine the consequences of cancellation of the contract and to assess compensation.

### **Chapter Twenty Announcement of Names of Bidders and Results of Public Tenders and Procurements**

#### **First: Announcement of Names of Bidders**

#### **Article 150:**

Government authorities shall announce the names of companies and establishments which have submitted bids in public tenders and procurements in accordance with the following:

- (1) The Authority shall prepare a notice board in the department in charge of tenders and procurements in a prominent place to announce the names of companies and establishments which have submitted their tenders. Said names shall also be announced in the website of the Authority. The announcement shall remain posted for not less than fifteen days.
- (2) The announcement shall be made after opening the sealed-bids and disclosing the prices, provided that the announcement includes the following:
  - (a) Name, address and line of business of the bidding company or establishment and the total value of the bid.
  - (b) Name of tender, purpose and place of execution.
- (3) Announcement is not required for works the cost of which is one hundred thousand riyals or less.

## **Second: Announcement of Results of Public Tenders and Procurements**

### **Article 151:**

Government authorities shall announce the results of public tenders and procurements carried out by them if their value exceeds one hundred thousand riyals in accordance with the following:

- (1) Government authorities shall announce statistics on the results of tenders and procurements whose value exceeds one hundred thousand riyals in accordance with its records of tenders and procurements every sixty days at most. The data shall include the following:
  - (a) Type of contract and works awarded.
  - (b) Name and address of the Authority awarding the contract and the address of the contact person to obtain information about the contract.

- (c) Place of execution of the contract, date of concluding it and its total value.
  - (d) Name, address and line of business of the company or establishment which was awarded the contract
- (2) Information of each contract shall be announced separately.
- (3) The Authority shall choose the suitable means of announcement in newspapers and other media. Announcement shall also be made in the website of the Authority in addition to providing the Secretariat of the Council of Chambers of Commerce and Industry with an electronic copy of the announcement.
- (4) Procurement of arms, ammunition, military equipment and ordnance as well as procurements relating to internal security and national defense shall be exempted from announcement referred to in this Article and Article 150 of these Regulations.

## **Chapter Twenty One**

### **Procedures of the Committee for Review of Compensation and Boycott of Contractors**

#### **Article 152:**

The work of “the committee for review of claims for compensation and boycott of contractors and suppliers” shall be regulated in accordance with the following procedures:

#### **Firstly: Conditions for Review of Compensation Claims:**

- (1) The Committee shall have jurisdiction to review compensation claims submitted in accordance with the contracts concluded under the Government Tender and Procurement Law and these Regulations.

- (2) A claim for compensation may not be reviewed except after the execution of the contract and the final hand-over of the works.
- (3) The compensation claim shall be submitted first to the contracting Authority. If the claimant is not satisfied with the decision of the Authority or sixty days have lapsed from the date of submission of the claim to the Authority, accompanied by complete supporting documents, without deciding on it, said claim may be submitted to the Committee.

**Secondly: Administrative Formation of the Committee's Office:**

The administrative formation of the secretariat of the committee and the required employees shall be approved pursuant to a decision by the Minister of Finance based on a recommendation by the chairman and members of the Committee.

**Thirdly: Duties of the Secretariat of the Committee:**

- (1) Providing technical and administrative support to the committee, organizing its meetings and recording its minutes.
- (2) Coordination between the committee and other authorities, receiving clients, delivery of notices and decisions, recording of incoming business files and referring them to the chairman of the committee.
- (3) The secretary of the committee shall attend the meetings of the committee and prepare meeting minutes, showing the date, place and time of each meeting as well as its proceedings.
- (4) Recording names of boycotted persons in a special register if the decisions issued against them are final, and preparing drafts of circulars to be signed by the Minister of Finance to notify government authorities of the boycott decisions.

- (5) Coordination with the competent department in the Ministry of Finance to expose violators if the decisions issued against them are final.

#### **Fourthly: Procedures of the Committee:**

- (1) The Committee shall obtain information and documents relating to the case. The chairman of the committee shall equally distribute cases among committee members, including himself, for review. He shall discuss such cases with the rest of the committee members and issue the appropriate decision.
- (2) The Committee may request any information or documents relating to the case. It may summon representatives of relevant government authorities, hear witnesses and conduct questioning, and hear contractors' defense and grievances in person.
- (3) The Committee may not issue the decision before summoning the person concerned or his agent in person to hear his statements and present his defenses. The persons concerned shall be notified of the time of the session by an official letter to be sent to their addresses as recorded with the Committee or through the Governor or by any suitable means. If a person fails to attend for the third time after being notified twice, the committee may issue a decision against him in absentia.
- (4) The compensation claim shall be stricken off if the claimant fails to attend for the third time after being notified thereof or after the lapse of three months from the date of abandoning his claim and failure to submit documents supporting his claim. The claim may not be re-submitted except for a justification acceptable to the Committee. If the claim is re-

submitted and he fails to attend after being notified twice, the claim shall be stricken off.

- (5) A Committee member shall recuse himself from reviewing a claim in the existence of one of the reasons for recusal provided for in the Law of Procedure before Sharia Courts.
- (6) In the absence of a legal quorum for issuing a decision due to the recusal or absence of a member, a substitute member shall attend. If there is still no quorum, the Minister of Finance shall assign any one he deems fit to complete the legal quorum. In case of absence or recusal of the chairman of the Committee, the vice chairman shall preside over the Committee.
- (7) If it appears to the Committee during review of a claim that there are indications of a crime punishable by law, it shall refer it to the competent authority and proceed with the claim unless the Committee finds that it cannot review the claim until the other case is decided.
- (8) If the claimant in a compensation claim seeks the assistance of an expert to provide opinion in technical or accounting aspects, the Committee may, at its discretion, comply with his request and refer the papers of the case to any experts it deems fit at the expense of the claimant.
- (9) Committee decisions shall be reasoned and shall include recitals and facts. The decisions shall provide for the right of either party to the case to object before the Board of Grievances within sixty days from the date of notification of the decision.
- (10) Committee decisions issued against the Public Treasury shall not be final until a final judgment is rendered by the Board of Grievances.
- (11) The decision shall be communicated to the parties to the claim by an official notification letter. If the person concerned refuses to receive the decision, it shall be delivered to him through the Governor and the decision shall be deemed

delivered from the date of lodging it with the Governor's office.

- (12) The Committee may not review a claim if the person concerned has an existing claim relating to the subject matter of the case before a judicial or administrative authority or before an arbitration tribunal for the purpose of deciding it. The Committee may also not review final judgments regarding claims.
- (13) The Committee shall submit an annual report to the Minister of Finance regarding its achievements and works.
- (14) These procedures shall apply to cases brought before the Committee from the date of the effectiveness of the Government Tender and Procurement Law.

## **Chapter Twenty Two General Provisions**

### **Article 153:**

The period of Hajj shall be deemed to be a mandatory period of suspension of all public work contracts in progress in the area of the Two Holy Mosques, Mecca and Medina or in the Holy Sites as from the first through the fifteenth of Dhu-Alhijjah. Government authorities shall provide for that in their contracts of execution of projects in the Holy Places.

### **Article 154:**

Tender and procurement terms as well as documents of contracts concluded by government authorities shall not include provisions inconsistent with the Government Tender and Procurement Law or with these Regulations. The latter's provisions shall prevail over those instruments and documents.

**Article 155:**

These Regulations shall be published in the Official Gazette and shall apply as from 20/02/1428H. They shall be reviewed after two years from the date of their application.