

PUBLIC PROCUREMENT AND SUPPLIES ADMINISTRATION ACT,
B.E. 2560 (2017)

HIS MAJESTY KING MAHA VAJIRALONGKORN BODINDRADEBAYAVARANGKUN;
Given on the 24th Day of February B.E. 2560;
Being the 2nd Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun is graciously pleased to proclaim that:

Whereas it is expedient to have the law on public procurement and supplies administration;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly, as follows.

Section 1. This Act is called the “Public Procurement and Supplies Administration Act, B.E. 2560 (2017)”.

Section 2.¹ This Act shall come into force after the expiration of one hundred eighty days as from the date of its publication in the Government Gazette.

Section 3. Provisions relating to supplies, procurement or supplies administration under any law, Rule, Regulation, Notification, Ordinance or requirement of State agencies falling under the applicability of this Act shall be repealed.

* Translated by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Tentative Version – subject to final authorisation by the Office of the Council of State.

¹ Published in Government Gazette, Vol. 134, Part 24a, Page 13, dated 24th February 2017.

Section 4. In this Act:

“procurement” means the operation for the acquisition of supplies through a sale, hire, lease or exchange or through such other juristic act as prescribed in the Ministerial Regulation;

“supplies” means goods, services, construction work, consultancy work and design or construction supervision work, including other operations as prescribed in the Ministerial Regulation;

“goods” means materials, hardware, land, structures and any other property, including services integrated into such goods provided that the value of the services must not exceed the value of such goods;

“services” means the employment of services, contracting for services, a hire of work and carriage under the Civil and Commercial Code from a natural person or a juristic person but does not include employment of workers by a State agency, carriage in the course of an official trip or the performance of work of a State agency, consultancy work, design or construction supervision work or a hire of service under the Civil and Commercial Code;

“construction work” means construction work for a building, construction work for a public utility or any other structure and a repair, extension, improvement, demolition or any other act of a similar nature towards such building, public utility or structure, including a service integrated into such construction work provided that the value of the service must not exceed the value of such construction work;

“building” means a permanent structure capable of human habitation or use, such as an office building, a hospital, a school, a stadium or any other structure of a similar nature, including any other structure constructed for use at such building such as a flagpole, a fence, a drainpipe, a reservoir, a road, water supply, electricity supply or any other object being a component of the building such as an air-conditioner, an elevator or furniture;

“public utility” means the work related to water supply, electricity supply, communication, telecommunication, water drainage, transportation by pipeline, water, land, air or rail or any other related act undertaken on, beneath or over the land;

“consultancy work” means the employment of services from a natural person or a juristic person for acting as a provider of advice or recommendations to a State agency on

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matters related to engineering, architecture, town and country planning, law, economics, fiscal matters, finance, environment, science, technology, public health, arts and cultures, studies and research or other areas falling within the missions of the State or a State agency;

“design or construction supervision work” means the employment of services from a natural person or a juristic person for designing or supervising construction work;

“supplies administration” means the retention, recording, disbursement, borrowing, inspection, maintenance and disposal of supplies;

“focal price” means the price used as a basis for comparing prices offered by persons tendering proposals, in respect of which procurement may actually be materialised in the following orders:

(1) the price derived from the calculation in accordance with the rules prescribed by the Focal Prices Committee;

(2) the price derived from the supplies index-price database established by the Comptroller-General’s Department;

(3) the standard price prescribed by the Bureau of the Budget or other central agencies;

(4) the price derived from market-price investigation;

(5) the price from the last procurement over two finance years;

(6) any other price in accordance with the rules, procedures or practices of the State agency concerned;

In the case where there exists the price under (1), the price under (1) shall first be adopted. In the case where the price under (1) does not exist but there exists the price under (2) or (3), the price under (2) or (3) shall first be adopted, provided that in considering whether the price under (2) or (3) shall be adopted, prime regard shall be had to the interest of the State agency. In the case where prices under (1), (2) and (3) do not exist, the price under (4), (5) or (6) shall be adopted provided that in considering whether the price under (4), (5) or (6) shall be adopted, prime regard shall be had to the interest of the State agency.

“budget money” means the budget money under the law on appropriations, the law on budgetary procedures or the law relating to budgetary transfers, money received by a State agency without, upon permission of the Minister, remittance thereof to the Treasury under

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the law on budgetary procedures or the law on treasury, money received by a State agency without remittance thereof to the Treasury as the State revenue under the law and money, taxes, duties, fees or any other interests which become revenues of the local administration under the law on or which the local administration is competent to levy under the law, and shall include loans, grants or other money as prescribed in the Ministerial Regulation;

“State agency” means the central administration, the provincial administration, the local administration, a State enterprise under the law on budgetary procedures, a public organisation, an independent organ, a constitutional organ, an administrative unit of the Court, a university under supervision by the State, an agency attached to the National Assembly or under supervision of the National Assembly, a State independent agency and any other agency as prescribed in the Ministerial Regulation;

“official” means the person in charge of procurement or supplies administration or the person entrusted by the competent person to perform the duty in connection with procurement or supplies administration of a State agency;

“Policy Commission” means the Public Procurement and Supplies Administration Policy Commission;

“Ruling Committee” means the Public Procurement and Supplies Administration Ruling Committee;

“Focal Prices Committee” means the Committee in charge of focal prices and registration of business operators;

“A.C.C. Committee” means the Anti-Corruption Co-operation Committee;

“Appeals Committee” means the Committee in charge of considering appeals and complaints;

“Minister” means the Minister having charge and control of the execution of this Act.

Section 5. The Minister of Finance shall have charge and control of the execution of this Act and shall have the powers to issue Ministerial Regulations and Rules in the execution of this Act.

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Such Ministerial Regulations and Rules shall enter into force upon their publication in the Government Gazette.

CHAPTER I GENERAL PROVISIONS

Section 6. In order that operations in connection with procurement and supplies administration through budget money shall proceed in a manner engendering efficiency, value for money in the light of missions of the State and prevention of corruption, State agencies shall comply with directions set forth by this Act and Ministerial Regulations, Rules and Notifications issued in accordance with the provisions of this Act.

In order to engender flexibility and expediency of operations of a State enterprise, a university under supervision of the State, a State agency in a foreign country or a work unit of a State agency located in a foreign country or any other State agency as prescribed in the Ministerial Regulation, such State enterprise, university under supervision of the State or State agency may, if it so intends, put in place its own Rules, Regulations or Ordinances relating to procurement and supplies administration in whole or in part, provided that it shall be done in conformity with the rules on procurement and supplies administration framed under this Act unless, in a foreign country where the State agency or a work unit of the State agency is located, laws, practices or local customs specifically exist or provide otherwise.

The Rules, Regulations or Ordinances under paragraph two may otherwise provide procurement by a selection method or by a specific method under section 56.

The Rules, Regulations or Ordinances under paragraph two and paragraph three must be made with the approval of the Policy Commission and shall be published in the Government Gazette.

Section 7. This Act shall not apply to:

- (1) procurement by a State enterprise directly involving commerce;

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(2) procurement of armories and services in connection with national security by a government-to-government method or by procurement from a foreign country of which the law provides otherwise;

(3) procurement for research and development, for technical services of a higher education institution or for employment of a consultant, where operations in accordance with this Act cannot be pursued;

(4) procurement to be funded by a loan or a grant from a foreign government, an international organisation, an international financial institution, a governmental or non-governmental foreign organization or a foreign foundation or private individual, where a contract or a stipulation for the loan or grant provides otherwise;

(5) procurement to be funded by a loan or a grant from a foreign government, an international organisation, an international financial institution, a governmental or non-governmental foreign organization or a foreign foundation or private individual, where a contract or a stipulation for the loan or grant provides otherwise, provided that such loan or grant is to be used together with budget money and the amount of the loan or grant to be used shall be in accordance with the rules prescribed in the Notification of the Policy Commission as published in the Government Gazette;

(6) procurement, by a higher education institution or a medical establishment which is a State agency, to be funded by donated money and fruits thereof, where such donated money is not used together with budget money.

The procurement under (1), (2) and (3) exempted from the application of this Act must be in accordance with the rules prescribed in the Notification of the Policy Commission as published in the Government Gazette. Such Notification may require a State agency to submit any procurement under (1), (2) or (3) to the Policy Commission for approving exemption as a matter of a particular case.

The exemption of any procurement from the application of the provisions of this Act in whole or in part other than the exemption under paragraph one shall be made by Royal Decree with the recommendation of the Policy Commission.

In the case under paragraph one and paragraph three, the State agency shall put in place by-laws or Rules relating to procurement and supplies administration in accordance with

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the rules and guidance under this Act, provided that the principles under section 8 paragraph one shall at least be contained therein.

The procurement under (6), a higher education institution or a medical establishment which is a State agency shall, apart from complying with the requirements under paragraph four, report operations to the Policy Commission in accordance with the rules and procedures prescribed by the Policy Commission.

Section 8. Procurement and supplies administration by a State agency must generate optimal benefits to the State agency and must conform with the following principles:

(1) the value for money principle, in the sense that the supplies to be procured must be of the quality or specifications responsive to the purposes for which they are to be used by the State agency, reasonably priced and have an appropriate and clear plan for supplies administration;

(2) the transparency principle, in the sense that procurement and supplies administration must be carried out openly, offer opportunities for fair competition, be conducted with equal treatment to all business operators, require an appropriate and sufficient time for tendering proposals and proceed with clear evidence and with disclosure of information on procurement and supplies administration at all stages;

(3) the efficiency and effectiveness principle, in the sense that there shall be a pre-formulated plan on procurement and supplies administration to ensure that procurement and supplies administration shall consistently be proceeded with appropriate timing and there shall be assessment and disclosure of the efficacy of procurement and supplies administration;

(4) accountability principle, in the sense that information on procurement and supplies administration shall be systematically retained in the interest of audits.

A state agency shall adopt the principles under paragraph one as guidance for its operations in connection with procurement and supplies administration. If procurement fails to conform with such principles but produces no significant effects on the procurement or is prompted by urgency or has any other justification or necessity, such procurement shall not be impaired.

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The principles under paragraph one shall be adopted as guidance for the performance within the powers and duties of the Policy Commission, the Ruling Committee, the Focal Prices Committee, the A.C.C. Committee and the Appeals Committee *mutatis mutandis*.

Section 9. In determining specifications of supplies to be procured, a State agency shall have regard to the quality, technicality and purposes of the procurement of such supplies and shall not determine specifications of supplies in a manner closely corresponding to those of any particular brand or of any particular supplier except that where only one brand exists for the supplies to be procured in accordance with such purposes or where spare parts of any particular brand are needed therefor, such brand may be specified.

Section 10. Subject to section 66, a State agency shall not disclose a proposal of any tenderer in a material part containing technical information of the tenderer in a manner likely to cause advantages and disadvantages amongst tenderers, to persons who are not concerned with the procurement in question or to other tenderers unless it is the disclosure of information to those having the powers and duties under the law or in the execution of law.

Section 11. A State agency shall prepare an annual procurement plan and, for dissemination thereof, publish it on information network systems of the Comptroller-General's Department and of the State agency in accordance with the procedure prescribed by the Comptroller-General's Department and shall cause the same to be posted openly at the posture place of such State agency unless:

(1) it is the case of necessary urgency or a supply in question is to be used for the intelligence purpose, under section 56 (1) (c) or (f);

(2) it is the case where the cost estimate for the procurement is as prescribed in the Ministerial Regulation or there arises an urgent need for the use of the supply or the supply is to be sold by auction, under section 56 (2) (b), (d) or (f);

(3) it is the case of the consultancy **work** of which the cost estimate is as prescribed in the Ministerial Regulation or which involves necessary urgency or is related to national security, under section 70 (3) (b) or (f);

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(4) it is the case of the design work or the construction supervision work which involves necessary urgency or is related to national security under section 82 (3).

The rules and procedures for, and details of, the preparation of a procurement plan under paragraph one and alteration thereof shall be in accordance with the Rule prescribed by the Minister.

Section 12. A State agency shall put in place records of reports on considerations, details, procedures and processes of procurement and retain the same systematically, for the purpose of examination of information upon request.

The preparation of records of reports on considerations, details, procedures and processes of procurement and the making of a request for examination of such reports shall be in accordance with the Rule prescribed by the Minister.

Section 13. A person having the duty to conduct the procurement must not have any interests with tenderers of proposals or contractual parties in relation to the work concerned.

In the case where it appears thereafter that the person having the duty to conduct the procurement under paragraph one has any interest with the tenderer of a proposal or the contractual party in any process of the procurement or is a member of a procurement committee without material prejudice to the procurement, such procurement shall not be impaired.

Section 14. In order to ensure that procurement shall proceed in an orderly manner without causing any detrimental effects to a State agency, in the case where a State agency has conducted procurement with a minor mistake or error in any process without material prejudice to the procurement, such procurement shall not be impaired.

Section 15. The questions as to which position holders have the power to approve the procurement of supplies by which methods under this Act and within which cost estimate shall be in accordance with the Rule prescribed by the Minister.

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CHAPTER II
PARTICIPATION BY THE PUBLIC AND BUSINESS OPERATORS IN ANTI-CORRUPTION

Section 16. In the interest of transparency in public procurement, a State agency shall cause the public to have participation in the observation of any of the processes of the procurement of the State agency as provided in this Chapter.

Section 17. In the execution of section 16, the A.C.C. Committee may require the conclusion of an integrity pact under the programme for co-operation on anti-corruption in public procurement under section 18. In this regard, the procurement requiring the conclusion of such integrity pact shall be as prescribed in the Notification of the A.C.C. Committee as published in the Government Gazette, having regard at least to the cost estimate of the procurement, anti-corruption measures, corruption-prone procurement and expediency of the operations of State agencies as well.

The A.C.C. Committee may determine procedures other than that under paragraph one to facilitate public participation in public procurement, as prescribed in the Notification of the A.C.C. Committee as published in the Government Gazette.

Section 18. An integrity pact under the programme for co-operation on anti-corruption in public procurement shall be made in the form of a mutual agreement between the State agency initiating the project in question and business operators intending to tender proposals, wherein the State agency initiating the project and the business operators intending to tender proposals shall agree to refrain from corruption in the procurement, and there shall be observers with the knowledge, expertise or experience necessary for the procurement project concerned, who shall observe the procurement from the process involving the drafting of the scope of work or details of supplies to be procured and the drafting of solicitation documents through the completion of the project. Observers must be of impartiality and have no interests

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in such procurement project and shall also report opinions together with recommendations to the A.C.C. Committee for information.

Guidance and procedures for the pursuit of the programme, the form of an integrity pact, the selection of observers and the preparation of the report under paragraph one shall be as prescribed in the Notification of the A.C.C. Committee as published in the Government Gazette.

Section 19. A business operator who is in such category or undertakes procurement with such cost estimate as prescribed in the Notification of the A.C.C. Committee published in the Government Gazette must, in case of an intention to tender a proposal to a State agency in the procurement under this Act, put in place an anti-corruption policy and have appropriate anti-corruption directions in relation to procurement.

Minimum standards of the policy and directions for anti-corruption in relation to procurement required to be put in place by the business operator under paragraph one shall be as prescribed in the Notification of the A.C.C. Committee published in the Government Gazette.

CHAPTER III

COMMISSION AND COMMITTEES

PART I

PUBLIC PROCUREMENT AND SUPPLIES ADMINISTRATION POLICY COMMISSION

Section 20. There shall be the Public Procurement and Supplies Administration Policy Commission, consisting of:

- (1) the Minister of Finance or Deputy Minister of Finance as entrusted by the Minister of Finance, as Chairperson;
- (2) *ex officio* members, viz, the Permanent Secretary for the Office of the Prime Minister, Permanent Secretary for Finance, Permanent Secretary for Digital Economy and Society, Secretary-General of the Council of State, Director of the Bureau of the Budget, Attorney-General,

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Director-General of the Department of Local Administration, Director of the State Enterprise Policy Office, the Auditor-General and Secretary-General of the National Anti-Corruption Commission;

(3) not less than five but not more than seven qualified members appointed by the Council of Ministers from the Council of Engineers, the Architects' Council of Thailand, the Board of Trade of Thailand and the Federation of the Thai Industries, one being appointed from each body, and from, for the remaining, persons with the knowledge, expertise or experience in engineering, architecture, fiscal matters, finance, administration, science and technology or other related areas beneficial to the operation of work of the Policy Commission.

The Director-General of the Comptroller-General's Department shall be a member and secretary and two Government officials of the Comptroller-General's Department entrusted by the Director-General of the Comptroller-General's Department shall be assistant secretaries.

Section 21. A qualified member must possess the qualifications and must not be under the prohibitions as follows:

- (1) being of Thai nationality;
- (2) being of not less than thirty-five years of age;
- (3) not being a bankrupt or not having been a dishonest bankrupt;
- (4) not being an incompetent person or a *quasi*-incompetent person;
- (5) not having been imprisoned by a final judgment to imprisonment except for an offence committed through negligence or a petty offence;
- (6) not being a political official, a holder of a political position, a member of a local council or a local administrator, an executive member or a holder of any other position in a political party or an official of a political party;
- (7) not having any direct interest or conflict of interests with the performance of duties in the capacity as a member.

Section 22. A qualified member shall hold office for a term of three years and may be re-appointed but may not serve for more than two consecutive terms.

At the expiration of the term under paragraph one, there shall be the appointment of new qualified members within sixty days. During a period in which new qualified members are

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not yet appointed, the qualified members who vacate office upon the expiration of the term shall remain in office in the interest of the continuance of work until the qualified members newly appointed take office.

Section 23. In addition to the vacation of office upon the expiration of the term, a qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being disqualified or being under any of the prohibitions under section 21;
- (4) being removed by the Council of Ministers on the ground of lack of competence, neglect or corruption in the performance of duties or misbehaviour.

In the case where a qualified member vacates office before the expiration of the term or where there is any appointment of a qualified member during the term of office of the members already appointed, be it the additional appointment or the appointment to fill the vacancy, the person so appointed shall be in office for the remaining term of the qualified members already appointed, provided that in the case of the appointment to fill the vacancy, if less than ninety days remain in the term of office, the appointment of a replacing qualified member may be omitted.

In the case where a qualified member vacates office before the expiration of the term, the Policy Commission shall consist of the total existing members until the appointment of a qualified member is made under paragraph two.

Section 24. The Policy Commission shall have the powers and duties as follows:

- (1) to recommend to the Council of Ministers policies on public procurement and supplies administration;
- (2) to recommend to the Council of Ministers approaches to the development and improvement of efficiency of public procurement and supplies administration, with a view to achieving greater fairness and efficiency;
- (3) to oversee public procurement and supplies administration of State agencies to ensure conformity with directions under this Act;

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(4) to decide voidness of a contract or agreement under section 104 and interpret and decide consultation issues in connection with Notifications issued by the Policy Commission under the provisions of this Act;

(5) to determine standards for work performance and ethics of officials;

(6) to determine directions, practices, patterns or models for the implementation of Rules issued under the provisions of this Act;

(7) to prepare reports on the implementation of this Act for submission to the Council of Ministers at least once a year;

(8) to perform other duties as provided in this Act or as entrusted by the Minister or the Council of Ministers.

In performing acts in accordance with the powers and duties under paragraph one, the Policy Commission may invite officials concerned or any other persons to give opinions or explanations or furnish relevant documents or evidence to assist its considerations.

Results of the performance under (4), (5), (6) and (7) shall be published on an information network system of the Comptroller-General's Department in accordance with the procedure prescribed by the Comptroller-General's Department.

Section 25. At a meeting of the Policy Commission, the presence of not less than one-half of the total number of members is required to constitute a quorum.

The Chairperson shall preside over a meeting. If the Chairperson is not present or is unable to perform the duty, one member present at the meeting shall be elected to preside over the meeting.

A decision of a meeting shall be by a majority of votes. In casting votes, each member shall have one vote. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote.

The Chairperson or any member who has direct or indirect interests in a matter to be considered at a meeting shall not attend the meeting or cast vote in such matter. In the case where there is a reasonable cause to suspect whether the Chairperson or such member has direct or indirect interests in a matter to be considered at a meeting or not, the meeting shall consider the matter in accordance with the Rule prescribed by the Minister. While the meeting is

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considering such matter, the Chairperson or such member shall, after having given explanations and answered interrogations, leave the meeting and it shall be deemed that the Policy Commission consists of the Chairperson and all members, as the case may be, not being required to leave the meeting by such reason.

Section 26. The Policy Commission has the power to appoint a sub-committee for performing any acts on its behalf and the provisions of section 25 shall apply to a meeting of a sub-committee *mutatis mutandis*.

PART II

PUBLIC PROCUREMENT AND SUPPLIES ADMINISTRATION RULING COMMITTEE

Section 27. There shall be the Public Procurement and Supplies Administration Ruling Committee, consisting of:

- (1) the Permanent Secretary for Finance, as Chairperson;
- (2) *ex officio* members, viz, the Director-General of the Comptroller-General's Department, a representative of the Office of the Permanent Secretary for the Office of the Prime Minister, a representative of the Office of the Permanent Secretary for Digital Economy and Society, a representative of the Office of the Council of State, a representative of the Bureau of the Budget, a representative of the Office of the Attorney-General, a representative of the Department of Local Administration and a representative of the State Enterprise Policy Office;
- (3) not less than five but not more than seven qualified members appointed by the Permanent Secretary for Finance from persons with the knowledge, expertise or experience in engineering, architecture, fiscal matters, finance, administration, science and technology or other related areas beneficial to the operation of work of the Ruling Committee.

The Director-General of the Comptroller-General's Department shall entrust one Government official of the Comptroller-General's Department as a member and secretary and the other two as assistant secretaries.

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Section 28. The provisions of section 21, section 22 and section 23 shall apply to qualified members in Part II of Chapter III, Commission and Committees, *mutatis mutandis*.

Section 29. The Ruling Committee shall have the powers and duties as follows:

(1) to recommend to the Policy Commission approaches to the resolution of problems in connection with public procurement and supplies administration;

(2) to give advice to officials or State agencies on the execution of this Act;

(3) to interpret and decide consultation issues in connection with the execution of this Act, Ministerial Regulations or Rules issued under the provisions of this Act;

(4) to grant exemption or relaxation from compliance with Ministerial Regulations or Rules issued under the provisions of this Act;

(5) to submit opinions to the Permanent Secretary for Finance to assist the issuance of orders proclaiming tenderers of proposals or contractual parties as persons having abandoned the work and the revocation of a list of persons having abandoned the work, and to submit opinions to the Permanent Secretary for Finance and the Minister to assist the consideration of appeals against orders proclaiming persons as having abandoned the work;

(6) to prepare reports on problems in and obstacles to procurement and supplies administration for submission to the Policy Commission at least once a year;

(7) to perform other duties as provided in this Act or as entrusted by the Policy Commission, the Minister or the Council of Ministers.

Results of the performance under (2), (3), (4) and (6) shall be published on an information network system of the Comptroller-General's Department in accordance with the procedure prescribed by the Comptroller-General's Department.

The interpretation of and decisions upon consultation issues under (3), if a State agency seeks consultation under section 8, section 13 or section 14, shall be completed by the Ruling Committee within thirty days as from the date of receipt thereof and the Ruling Committee shall have the power to order suspension of the procurement for the time being if it deems appropriate unless the State agency has already signed the contract for the procurement.

In the case where the Ruling Committee has given a decision under paragraph three that failure to comply with section 8, section 13 or section 14 materially affects the

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procurement, the Ruling Committee shall have the power to order cancellation of such procurement unless the State agency has already signed the contract for the procurement.

Section 30. The Ruling Committee has the power to appoint a sub-committee for performing any acts on its behalf.

The provisions of section 25 shall apply to a meeting of the Ruling Committee and a sub-committee *mutatis mutandis*.

Section 31. The Ruling Committee has the power to summon officials concerned or any other persons to give explanations or statements or furnish relevant documents or evidence to assist its considerations.

PART III

COMMITTEE IN CHARGE OF FOCAL PRICES AND REGISTRATION OF BUSINESS OPERATORS

Section 32. There shall be the Committee in Charge of Focal Prices and Registration of Business Operators, consisting of:

(1) the Director-General of the Comptroller-General's Department, as Chairperson;

(2) *ex officio* members, viz, a representative of the Ministry of Defence, a representative of the Ministry of Finance, a representative of the Ministry of Digital Economy and Society, a representative of the Ministry of Commerce, a representative of the Ministry of Public Health, a representative of the Bureau of the Budget, a representative of the State Enterprise Policy Office, a representative of the Royal Irrigation Department, a representative of the Department of Highways, a representative of the Department of Rural Roads, a representative of the Department of Public Works and Town and Country Planning and a representative of the State Audit Office;

(3) not less than seven but not more than eleven qualified members appointed by the Permanent Secretary for Finance from the Council of Engineers, the Architects' Council of Thailand, the Board of Trade of Thailand and the Federation of the Thai Industries, one being

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appointed from each body, and from, for the remaining, persons with the knowledge, expertise or experience in supplies affairs or other related areas beneficial to the operation of work of the Focal Prices Committee.

The Director-General of the Comptroller-General's Department shall entrust one Government official of the Comptroller-General's Department as a member and secretary and the other two as assistant secretaries.

Section 33. The provisions of section 21, section 22 and section 23 shall apply to qualified members in Part III of Chapter III, Commission and Committees, *mutatis mutandis*.

Section 34. The Focal Prices Committee shall have the powers and duties as follows:

- (1) to issue Notifications prescribing rules and procedures for the determination of focal prices;
- (2) to oversee the determination of focal prices to ensure conformity with directions under this Act;
- (3) to give officials or State agencies advice and recommendations on the implementation of rules and procedures for the determination of focal prices;
- (4) to interpret and decide consultation issues in connection with rules and procedures for the determination of focal prices;
- (5) to grant exemption or relaxation in the case of inability to comply with details of the rules and procedures for the determination of focal prices under (1);
- (6) to considers complaints in the case where it considers that a State agency fails to implement the rules and procedures for the determination of focal prices;
- (7) to issue Notifications prescribing rules, procedures and conditions for registration of business operators eligible for tendering proposals to State agencies;
- (8) to prepare reports on problems in and obstacles to the determination of focal prices of State agencies and registration of business operators eligible for tendering proposals to State agencies for submission to the Policy Commission at least once a year;

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(9) to perform other duties as provided in this Act or as entrusted by the Policy Commission, the Minister or the Council of Ministers.

Results of the performance under (1), (4), (5), (6), (7) and (8) shall be published on an information network system of the Comptroller-General's Department in accordance with the procedure prescribed by the Comptroller-General's Department.

The Notifications under (1) and (7) shall be published in the Government Gazette.

Section 35. The Focal Prices Committee must consider and review rules and procedures for the determination of focal prices at least once a year.

The review of rules and procedures for the determination of focal prices under paragraph one shall be published on an information network system of the Comptroller-General's Department and also published in the Government Gazette.

Section 36. The Focal Prices Committee has the power to appoint a sub-committee for performing any acts on its behalf, provided that the appointment shall be made by reference to expertise in each category of supplies such as construction work, pharmaceutical and medical products or supplies which are concerned information technology.

The provisions of section 25 shall apply to a meeting of the Focal Prices Committee and a sub-committee *mutatis mutandis*.

PART IV

ANTI-CORRUPTION CO-OPERATION COMMITTEE

Section 37. There shall be the Anti-Corruption Co-operation Committee, consisting of:

(1) the Permanent Secretary for Finance, as Chairperson;

(2) *ex officio* members, viz, the Director-General of the Comptroller-General's Department, a representative of the Office of the Council of State, a representative of the Office of the National Economic and Social Development Board, a representative of the Bureau of the

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Budget, a representative of the Office of the Attorney-General, a representative of the State Enterprise Policy Office and a representative of the Office of the National Anti-Corruption Commission;

(3) not less than five but not more than seven qualified members appointed by the Permanent Secretary for Finance from non-governmental organisations established with the objects of countering corruption or promoting morality and ethics, provided that such non-governmental organisations must be juristic persons under Thai law with recognised work-performance and at least two-year operation.

The Director-General of the Comptroller-General's Department shall entrust one Government official of the Comptroller-General's Department as a member and secretary and the other two as assistant secretaries.

Section 38. The provisions of section 21, section 22 and section 23 shall apply to qualified members in Part IV of Chapter III, Commission and Committees, *mutatis mutandis*.

Section 39. The A.C.C. Committee shall have the powers and duties as follows:

(1) to determine directions and procedures for the pursuit of programmes on public procurement anti-corruption co-operation;

(2) to determine the form of an integrity pact and the form of a report of observers;

(3) to select procurement projects for joining programmes on public procurement anti-corruption co-operation;

(4) to select observers for joining programmes on public procurement anti-corruption co-operation;

(5) to interpret and decide consultation issues in connection with the directions and procedures for carrying out programmes on public procurement anti-corruption co-operation under (1);

(6) to grant exemption or relaxation in the case of inability to comply with details of the directions and procedures for carrying out programmes on public procurement anti-corruption co-operation under (1);

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(7) to consider complaints in the case where it considers that a State agency fails to implement the directions and procedures for carrying out programmes on public procurement anti-corruption co-operation under (1);

(8) to prepare reports on assessment of procurement projects joining programmes on public procurement anti-corruption co-operation for submission to the Policy Commission at least once a year;

(9) to perform other duties as provided in this Act.

Results of the performance under paragraph one shall be published on an information network system of the Comptroller-General's Department in accordance with the procedure prescribed by the Comptroller-General's Department.

Section 40. The A.C.C. Committee has the power to appoint a sub-committee for performing any acts on its behalf.

The provisions of section 25 shall apply to a meeting of the A.C.C. Committee and a sub-committee *mutatis mutandis*.

PART V

COMMITTEE IN CHARGE OF CONSIDERING APPEALS AND COMPLAINTS

Section 41. There shall be the Committee in charge of considering appeals and complaints, consisting of:

(1) the Permanent Secretary for Finance, as Chairperson;

(2) *ex officio* members, viz, the Director-General of the Comptroller-General's Department, a representative of the Office of the Permanent Secretary for the Office of the Prime Minister, a representative of the Office of the Council of State, a representative of the Bureau of the Budget, a representative of the Office of the Attorney-General, a representative of the Department of Local Administration, a representative of the State Enterprise Policy Office and a representative of the State Audit Office;

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(3) not less than five but not more than seven qualified members appointed by the Permanent Secretary for Finance from the Council of Engineers, the Architects' Council of Thailand, the Board of Trade of Thailand and the Federation of the Thai Industries, one being appointed from each body, and from, for the remaining, persons with the knowledge, expertise or experience in engineering, architecture, fiscal matters and finance, administration, science and technology or other related areas beneficial to operation of work of the Appeals Committee.

The Director-General of the Comptroller-General's Department shall entrust one Government official of the Comptroller-General's Department as a member and secretary and the other two as assistant secretaries.

Section 42. The provisions of section 21, section 22 and section 23 shall apply to qualified members in Part V of Chapter III, Commission and Committees, *mutatis mutandis*.

Section 43. The Appeals Committee shall have the powers and duties as follows:

(1) to consider and decide appeals under section 119;

(2) to consider complaints in the case where it considers that a State agency fails to implement the directions under this Act, Ministerial Regulations or Rules issued under the provisions of this Act;

(3) to prepare reports on problems in and obstacles to the consideration of appeals and complaints for submission to the Policy Commission at least once a year;

(4) to perform other duties as provided in this Act or as entrusted by the Policy Commission, the Minister or the Council of Ministers.

Results of the performance under (1), (2) and (3) shall be published on an information network system of the Comptroller-General's Department in accordance with the procedure prescribed by the Comptroller-General's Department.

The submission of complaints and the consideration of complaints under (2) shall be in accordance with the Rule prescribed by the Minister.

In the case where the consideration of a complaint under (2) reveals that a State agency has failed to comply with this Act or the Ministerial Regulation or the Rule issued under the provisions of this Act, the Appeals Committee shall have the power to order suspension of

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the procurement for the time being unless the contract has already been signed for the procurement.

The in case where the Appeals Committee has performed its duty in good faith, the Appeals Committee shall be afforded protection against civil, criminal or administrative liability.

Section 44. The Appeals Committee has the power to appoint a sub-committee for performing any acts on its behalf.

The provisions of section 25 shall apply to a meeting of the Appeals Committee and a sub-committee *mutatis mutandis*.

The provisions of section 43 paragraph five shall apply to any acts done in the performance of the duty of a sub-committee *mutatis mutandis*.

Section 45. The Appeals Committee has the power to summon officials concerned or any other persons to give explanations or statements or furnish relevant documents or evidence to assist its considerations.

CHAPTER IV

ORGANS FACILITATING PUBLIC PROCUREMENT AND SUPPLIES ADMINISTRATION

Section 46. The Comptroller-General's Department shall have the duty to maintain and develop electronic systems for procurement and publish, for the dissemination purpose, information on procurement on an information network system of the Comptroller-General's Department in the interest of public accessibility and examination.

Section 47. The Comptroller-General's Department shall have the duty to establish a database of reference prices of supplies to be used by State agencies as supporting information in the procurement of the supplies concerned and shall disseminate such information on an information network system of the Comptroller-General's Department.

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In determining reference prices of supplies, regard shall be had to market prices of such supplies and the determination of a reference price of the same supply may be made in a manner that the same price need not be used throughout the country.

The Comptroller-General's Department must improve the database under paragraph one at least twice a year.

Section 48. The Comptroller-General's Department shall have the duty to gather, analyse and assess results of work performance under this Act and prepare a report on problems in and obstacles to the operation of activities together with recommendations with a view to developing and improving efficiency of public procurement and supplies administration for submission to the Policy Commission at least once a year.

For the purpose of the execution of paragraph one, State agencies shall submit reports on results of work performance under this Act to the Comptroller-General's Department in accordance with the rules, procedures and conditions prescribed in the Ministerial Regulation.

The report under paragraph one, upon approval by the Policy Commission, shall be published on an information network system of the Comptroller-General's Department.

Section 49. The Comptroller-General's Department shall have the duty to determine and put in place training programmes for promoting and developing officials' knowledge and expertise in relation to public procurement and supplies administration in accordance with professional principles and in accordance with this Act, provided that the Comptroller-General's Department may perform the same by itself or do so in association with other agencies or private bodies concerned.

Officials having accomplished the training under paragraph one and having been appointed to assume positions involving the performance in connection with procurement or supplies administration shall be entitled to additional stipends or other similar money as follows:

(1) in the case of Government officials, an official appointed to assume a position involving the performance in connection with procurement or supplies administration shall be a holder of a specially justifiable position under the law on civil service organisation; provided that, in determining the additional stipend for the specially justifiable position, regard shall also be had

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to duties and the quality of the work in comparison to those performing other work eligible for additional stipends for specially justifiable positions, in accordance with the Rule prescribed by the Minister;

(2) in the case of non-Government officials, an official appointed to assume a position involving the performance in connection with procurement or supplies administration shall be a holder of a specially justifiable position under the law relating to personnel administration of the State agency to which such official is affiliated with entitlement to an additional stipend for the specially justifiable position under the law on such particular matter or shall be a holder of a position eligible for other similar money under the law relating to personnel administration of the State agency to which such official is affiliated, as the case may be; provided that, in determining the additional stipend for the specially justifiable position or other similar money, comparison shall be made to additional stipends for specially justifiable positions or other similar money of State agencies of the same kind.

Section 50. The Comptroller-General's Department shall have the duty to perform work in connection with clerical affairs, meeting affairs, technical affairs, studies and acquisition of information and relevant affairs for the Policy Commission, the Ruling Committee, the Focal Prices Committee, the A.C.C. Committee, the Appeals Committee and sub-committees appointed by such Commission or Committees and shall have other powers and duties as provided in this Act.

CHAPTER V BUSINESS OPERATORS REGISTRATION

Section 51. The Focal Prices Committee shall have the power to issue a Notification, and publish the same in the Government Gazette, designating the construction work in a particular field to be the one in respect of which construction operators in such field may participate in tendering proposals to a State agency when the construction operators in such field have been registered with the Comptroller-General's Department.

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The Focal Prices Committee may issue a Notification, and publish the same in the Government Gazette, designating the construction work in a particular field, in which construction operators must be registered with the Comptroller-General's Department under paragraph one, to be financed by budget money in a particular amount or to be performed by professionals in a particular field.

The rules, procedures and conditions for registration of construction operators who may participate in tendering proposals to a State agency under paragraph one shall be as prescribed in the Notification of the Focal Prices Committee as published in the Government Gazette, provided that all construction operators shall be afforded an opportunity to register at all times.

Section 52. The Focal Prices Committee may, in the case where it deems appropriate, issue a Notification, and publish the same in the Government Gazette, designating supplies operators other than construction operators to be business operators who may participate in tendering proposals to a State agency when such business operators have been registered with the Comptroller-General's Department.

The rules, procedures and conditions for registration of other supplies operators who may participate in tendering proposals to a State agency under paragraph one shall be as prescribed in the Notification of the Focal Prices Committee as published in the Government Gazette, provided that all business operators shall be afforded an opportunity to register at all times.

Section 53. The Comptroller-General's Department shall publish lists of construction operators under section 51 and other supplies operators under section 52 already registered on the information network system of the Comptroller-General's Department and shall update the information on every occasion of any change thereof.

In the case where the Comptroller-General's Department has already registered construction operators and other supplies operators under paragraph one, a State agency need not conduct registration of business operators of those types and a State agency shall also

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determine qualifications of persons eligible for tendering proposals under section 51 or section 52 in a notification soliciting participation in the procurement of such State agency.

The qualifications and prohibitions of business operators eligible for applying for registration, the examination of the qualifications and prohibitions or the scrutiny and monitoring thereof, the removal of names from the register, rates of fees for applications for registration and rules and procedures for appeals and the consideration of appeals in the case of refusal by the Comptroller-General's Department to register business operators shall be as prescribed in the Ministerial Regulation.

CHAPTER VI PROCUREMENT

Section 54. The provisions of this Chapter shall apply to procurement of supplies, except consultancy work and design or construction supervision work.

Section 55. Procurement of supplies may be conducted by the following methods:

(1) a general solicitation notification method, viz, solicitation by a State agency made to business operators in general possessing qualifications determined by the State agency for tendering proposals;

(2) a selection method, viz, solicitation by a State agency made specifically to at least three business operators possessing qualifications determined by the State agency for tendering proposals, except that there exist less than three business operators possessing the determined qualifications for such particular work;

(3) a specific method, viz, solicitation by a State agency made to a particular business operator possessing qualifications determined by the State agency for tendering a proposal or for price bargaining negotiations, including procurement of supplies made directly with a business operator where it involves such a small cost estimate as prescribed in the Ministerial Regulation issued under the provisions of section 96 paragraph two.

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Section 56. In procurement of supplies, a State agency shall first elect to use a general solicitation notification method, except that:

(1) in the following cases, a selection method shall be used:

(a) a general solicitation notification method has been used but no one has tendered a proposal or the proposals have not been selected;

(b) supplies to be procured have exceptional or complicated specifications or must be produced, distributed, constructed or serviced by a business operator possessing specific workmanship or exceptional expertise or high skills and such business operators are limited;

(c) there arises an urgent need for the use of such supplies in consequence of an unexpected event which makes the use of a general solicitation notification method untimely for the demand of the supplies;

(d) the supplies, by reason of their nature of use or technical restrictions, make it necessary to specify a particular brand;

(e) the supplies are necessary to be purchased directly from abroad or procured through an international organisation;

(f) the supplies are to be used for official intelligence or affairs which involve confidentiality of the State agency or which are related to national security;

(g) it is a hire of work for repairing supplies required to be first disassembled for inspection in order to know defects before estimating costs of repair; for instance, a hire of work for a repair of a machine, a mechanical instrument, an engine, an electrical device or an electronic device;

(h) it is any other case prescribed in the Ministerial Regulation;

(2) in the following cases, a specific method shall be used:

(a) both a general solicitation notification method and a selection method have been used but no one has tendered a proposal or the proposals have not been selected;

(b) it is procurement of supplies to be generally produced, distributed, constructed or serviced and the cost estimate for each procurement does not exceed that prescribed in the Ministerial Regulation;

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(c) it is procurement of supplies in respect of which there is only one business operator directly possessing the qualifications or it is procurement of supplies from a business operator who is the only one legally authorised sales distributor or service distributor in Thailand and there are no other supplies to be used in lieu thereof;

(d) there arises a need for the use of such supplies in emergency in consequence of a disaster or a natural disaster or a dangerous communicable disease under the law on communicable diseases and procurement by a general solicitation notification method or a selection method may cause a delay and result in serious loss;

(e) the supplies to be procured are associated with those previously procured and additional procurement thereof is needed for the sake of completion or continuity of their use, provided that the value of the supplies to be additionally procured must not be higher than that of the supplies previously procured;

(f) the supplies are those to be sold in auction by a State agency, an international organisation or a foreign agency;

(g) the supply is the land or a structure specifically needed to be purchased;

(h) it is any other case prescribed in the Ministerial Regulation.

The Minister may issue a Ministerial Regulation under (1) (h) or (2) (h) prescribing supplies intended by the State to grant promotion or support under section 65 (4). If the Minister has issued a Ministerial Regulation under (2) (h) prescribing supplies intended by the State to grant promotion or support under section 65 (4), a State agency shall, in case of procurement of such supplies, first use a specific method under (2) (h).

In the case where a State agency in a foreign country intends to conduct procurement or there occurs an activity required to be performed in a foreign country, procurement may be made by a selection method or a specific method without first using a general solicitation notification method.

The Minister may issue the Rule prescribing other additional details of procurement of the supplies under paragraph one as needed for the purpose of the execution thereof.

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Section 57. The details of procurement of supplies in this Chapter by an electronic method on an information network system of the Comptroller-General's Department shall be in accordance with the Rule prescribed by the Minister.

Section 58. For the benefit of the public sector as a whole, any particular State agency may conduct procurement of supplies for another State agency in accordance with a framework agreement between the State agency conducting the procurement and a contractual party.

In the execution of paragraph one, prime regard shall be had to the value for money and purposes for use, in accordance with the Rule prescribed by the Minister.

Section 59. For the purpose of preparing draft terms of reference or details of the supplies to be procured and draft solicitation documents prior to procurement of supplies by a general solicitation notification method, a State agency may cause to be held the hearing of opinions on draft terms of reference or details of the supplies to be procured and draft solicitation documents from business operators.

The rules, procedures and period of time for the hearing of opinions on draft terms of reference or details of the supplies to be procured and draft solicitation documents to be used as solicitation documents shall be in accordance with the Rule prescribed by the Minister.

Section 60. Prior to procurement of construction work by a method under section 55, a State agency shall make available a plan for the construction work. In this regard, the State agency may intend to draw up the same by itself or conduct procurement in accordance with Chapter VIII, Design or Construction Supervision Work.

In the case where there must be procurement of a design together with the construction in respect of which a plan for the construction work may not be made available under paragraph one, the proceeding under paragraph one may be exempted. The question as to in which case procurement of a design together with the construction shall be conducted shall also be considered in the light of appropriateness of the project and cost estimate therefor. In

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this regard, rules and procedures for procurement of a design together with the construction shall be in accordance with the Rule prescribed by the Minister.

Section 61. In conducting each procurement, the competent person shall appoint a person in charge of such procurement. In this regard, it may be conducted by a procurement committee or any official.

A composition and a quorum of a committee and duties of the person in charge of procurement under paragraph one shall be in accordance with the Rule prescribed by the Minister.

Remuneration for the person in charge of procurement under paragraph one shall be as prescribed by the Ministry of Finance.

Section 62. In conducting procurement by a method under section 55 (1), a State agency shall prepare a solicitation notification and documents for general information on the supplies intended to be procured by the State agency, the date, time and venue for tendering proposals and other conditions.

The solicitation notification and documents under paragraph one shall be published, for the dissemination purpose, on information network systems of the Comptroller-General's Department and of the State agency in accordance with the procedure prescribed by the Comptroller-General's Department and shall be posted openly at a posture place of such State agency. In this regard, the State agency may also disseminate such solicitation notification and documents by other methods.

The rules, procedures and details for the preparation of the solicitation notification and documents and a period of time for the solicitation notification shall be in accordance with the Rule prescribed by the Minister.

In conducting procurement by a method under section 55 (2) or (3), a State agency shall prepare a solicitation letter to the business operator for tendering a proposal, in accordance with the Rule prescribed by the Minister.

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Section 63. Subject to section 62, a State agency shall publish details and information as to focal prices and the calculation of focal prices on an information network system of the Comptroller-General's Department in accordance with the procedure prescribed by the Comptroller-General's Department.

Section 64. Subject to section 51 and section 52, a person who intends to tender a proposal in procurement by a State agency must at least have the qualifications and must not be under prohibitions, as follows:

- (1) having legal capacity;
- (2) not being a bankrupt;
- (3) not being under dissolution of business;
- (4) not being a person under suspension from tendering proposals or making contracts with State agencies under section 106 paragraph three;
- (5) not being a person whose name is in a circulated list of persons abandoning work of State agencies under section 109;
- (6) having other qualifications or being under other prohibitions as prescribed in the Notification of the Policy Commission as published in the Government Gazette.

The State agency shall include in a solicitation notification and documents a condition that a person intending to tender a proposal must also produce evidence of his capability and readiness possessed on the date of tendering the proposal.

Section 65. In considering and selecting proposals by a method under section 55 (1) or (2), a State agency shall do so by primarily considering the benefits of the State agency and purposes for use, having regard to the price criterion and taking into account other criteria as follows:

- (1) the cost of the supply in question throughout its usage life;
- (2) standards of the goods or services;
- (3) after-sale services;
- (4) supplies intended to be granted promotion or support by the State;
- (5) assessment of work performance of business operators;

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(6) technical proposals or other proposals, in the case where it is required that technical proposals or other proposals be first tendered under paragraph six;

(7) other criteria as prescribed in the Ministerial Regulation.

Supplies intended to be granted promotion or support under (4) shall be as prescribed in the Ministerial Regulation. In this regard, promotion or support must at least be granted to supplies creating innovation or supplies conserving energy or the environment.

The Minister shall issue the Rule prescribing rules for the consideration and selection of proposals under paragraph one, which shall at least require a State agency to elect to use any particular criterion or more criteria in conjunction with the price criterion and shall clearly determine weight to be attached to each criterion, provided that if a State agency may not elect to use other criteria and needs to use the sole criterion for the consideration and selection, the price criterion shall be used. Scoring as well as reasons therefor shall be specified for each criterion. In the case where it is not possible to issue the Rule prescribing rules for the consideration and selection of proposals for all kinds of supplies, exemplary cases in any particular type of supplies may be drawn as guidance for the consideration and selection of proposals for other supplies.

After considering proposals in conjunction with the criteria used by a State agency, the consideration and selection of proposals shall be made in order of the scores. A State agency shall select the tenderer's proposal which carries the highest score and shall also record the result of such consideration.

A State agency shall also publish criteria used for the consideration and selection and weight attached to each criterion in its solicitation notification or solicitation letter, as the case may be.

In the case of procurement of supplies which, by their nature, require the consideration of technology thereof or qualifications of tenderers of proposals or in any other case in which the consideration and selection of proposals under paragraph one are fraught with difficulty, a State agency may require that technical proposals or other proposals shall first be tendered prior to the consideration and selection of proposals under paragraph one, in accordance with the Rule prescribed by the Minister.

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Section 66. A State agency shall publish the person successful in the procurement or the selected person as well as supporting reasons therefor on information network systems of the Comptroller-General's Department and of the State agency in accordance with the procedure prescribed by the Comptroller-General's Department and shall post the same openly at a posture place of such State agency.

A contract for procurement may be signed only after the period for appeals has elapsed and no one has made any appeal under section 117 or, in the case of any appeal, a State agency has received from the Appeals Committee a notification allowing further procurement proceedings, unless the procurement involves an urgent need under section 56 (1) (c) or the procurement is made by a specific method or the procurement involves such a small cost estimate as prescribed in the Ministerial Regulation issued under section 96 paragraph two.

Section 67. Prior to the signing of a contract, a State agency may issue a notification declaring cancellation of the procurement already conducted in the following cases where:

- (1) such State agency is not allocated the budget money to finance the procurement or the budget money allocated is insufficient for proceeding with the procurement;
- (2) there arises the conduct in the manner that the tenderer of the proposal who is successful in the procurement or who is selected has mutual benefits or has any interest together with other tenderers of proposals or obstructs fair competition or enters into conspiracy with other tenderers of proposals or officials in making price tenders or engages in the conduct perceivably indicative of any other corruption in making price tenders, in accordance with the Rule prescribed by the Minister;
- (3) proceeding with procurement may cause loss to the State agency or prejudice public interests;
- (4) other cases similar to those in (1), (2) or (3), as prescribed in the Ministerial Regulation.

The cancellation of the procurement under paragraph one is the privilege of the State agency. A tenderer of a proposal in the procurement which is so cancelled may not claim any damages from the State agency.

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Upon cancellation of the procurement, the State agency shall notify all business operators, who have taken or purchased solicitation documents, of the reasons for the cancellation of such procurement.

In the case where at least two State agencies tender proposals, such State agencies shall not be deemed to have mutual benefits or to have interests together with other State agencies under (2).

The notification under paragraph on shall be published on information network systems of the Comptroller-General's Department and of the State agency in accordance with the procedure prescribed by the Comptroller-General's Department and shall be posted openly at the posture place of such State agency. In this regard, the State agency may also disseminate such notification by other methods.

Section 68. Details, methods and procedures for the procurement of supplies not provided for in this Chapter shall be in accordance with the Rule prescribed by the Minister.

CHAPTER VII CONSULTANCY WORK

Section 69. Consultancy work may be procured by the following methods:

(1) a general solicitation notification method, viz, solicitation by a State agency made to consultants in general possessing qualifications determined by the State agency for tendering proposals;

(2) a selection method, viz, solicitation by a State agency made specifically to at least three consultants possessing qualifications determined by the State agency for tendering proposals, except that there exist less than three consultants possessing the determined qualifications for such particular work;

(3) a specific method, viz, solicitation by a State agency made to a particular consultant possessing qualifications determined by the State agency for tendering a proposal or for price bargaining negotiations.

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Section 70. A State agency shall, for consultancy work, elect to use any method under section 69 in accordance with the following rules:

(1) a general solicitation notification method, for consultancy work, shall be used for uncomplicated work, work which is, in nature, the routine work of the State agency or work which has such standard as established by professional principles, where consultants capable of performing such work are generally available;

(2) a selection method shall, for consultancy work, be permitted in the following cases:

(a) a general solicitation notification method has been used but no one has tendered a proposal or the proposals have not been selected;

(b) it is the work which is complicated, very complicated or involves such specific technicality as to make it unsuitable to be proceeded by a general solicitation notification method;

(c) it is the work in respect of which consultants therefor are limited;

(d) other cases as prescribed in the Ministerial Regulation;

(3) a specific method shall, for consultancy work, be permitted in the following cases:

(a) both a general solicitation notification method and a selection method have been used, or a selection method has been used, but no one has tendered a proposal or the proposals have not been selected

(b) it is the work of which the cost estimate for each occasion does not exceed that prescribed in the Ministerial Regulation;

(c) it is the work which, by technical reasons, needs to be performed by the original consultant in furtherance of the work previously performed;

(d) it is the work in respect of which consultants are limited and of which the cost estimate for each occasion does not exceed that prescribed in the Ministerial Regulation;

(e) it is the work in respect of which there is only one consultant therefor;

(f) it is the work in respect of which there arises an urgent need or which is related to national security, where delay may prejudice the State agency or national security;

(g) other cases as prescribed in the Ministerial Regulation.

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The Policy Commission shall have the power to publish on an information network system of the Comptroller-General's Department examples of uncomplicated work under (1) or work which is complicated, very complicated or involves specific technicality under (2) (b).

The Minister may issue the Rule prescribing other additional details of consultancy work under paragraph one as needed for the purpose of the execution thereof.

Section 71. The details of procurement of consultancy work in this Chapter by an electronic method on an information network system of the Comptroller-General's Department shall be in accordance with the Rule prescribed by the Minister.

Section 72. The provisions of section 58 shall apply to consultancy work in this Chapter *mutatis mutandis*.

Section 73. A consultant who may participate in tendering the work to a State agency must be the consultant registered with the Consultants Information Centre of the Ministry of Finance unless there is written certification from the Consultants Information Centre of the Ministry of Finance that there is no consultant offering services for such work or it is the consultancy work of a State agency in a foreign country.

The procedure for submission of applications for the registration of consultants, the qualifications and prohibitions, removal of names from the register, rates of fees for applications for the registration and rules and procedures for appeals and the consideration of appeals in the case of refusal by the Consultants Information Centre of the Ministry of Finance to register consultants shall be as prescribed in the Ministerial Regulation. In this regard, in issuing the Ministerial Regulation in connection with the qualifications and prohibitions of consultants, regard shall also be had to consistency with other laws relating to the operation of professions of consultants.

The Minister may, in the case where it is deemed appropriate, issue the Rule otherwise prescribing rules for the registration of consultants.

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Section 74. In procuring each consultancy work, the competent person shall appoint a consultancy work committee to be in charge thereof.

The composition, quorum and duties of a consultancy work committee shall be in accordance with the Rule prescribed by the Minister.

Remuneration of a consultancy work committee under paragraph one shall be as prescribed by the Ministry of Finance.

Section 75. In considering and selecting proposals, a State agency shall have prime regard to the value for money and purposes of the consultancy work. In this regard, the following quality criteria shall be taken into account:

- (1) performance and experience of consultants;
- (2) management methods and operational methods;
- (3) the number of personnel involving in the work;
- (4) types of consultants intended to be promoted or supported by the State;
- (5) financial proposals;
- (6) other criteria as prescribed in the Ministerial Regulation.

Types of consultants intended to be promoted or supported by the State under (4) shall be as prescribed in the Ministerial Regulation.

Section 76. The consideration and selection of proposals by a method under section 69 (1) or (2) shall, in addition to the quality criteria under section 75, be in accordance with the following considerations and weight:

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

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

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

The Minister may issue the Rule prescribing rules for the consideration and selection of proposals for consultancy work of particular types or prescribing other additional details of consultancy work under paragraph one as needed for the purpose of the execution thereof.

Section 77. The provisions of section 62 and section 66 shall apply *mutatis mutandis* to the preparation of solicitation notifications or solicitation letters to be extended to consultants for tendering proposals and the announcement of successful tenderers or selected persons.

Section 78. Details as to methods and procedures for consultancy work not provided in this Chapter shall be in accordance with the Rule prescribed by the Minister.

CHAPTER VIII DESIGN OR CONSTRUCTION SUPERVISION WORK

Section 79. Design or construction supervision work may be procured by the following methods:

- (1) a general solicitation notification method;
- (2) a selection method;
- (3) a specific method;
- (4) a design competition method.

Section 80. A general solicitation notification method shall be used for design or construction supervision work which is, in nature, uncomplicated.

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Section 81. A selection method shall be for design or construction supervision work, whereby solicitation is made by a State agency to at least three service providers possessing qualifications determined by the State agency for tendering proposals, except that there exist less than three service providers possessing the determined qualifications for such particular work. In this regard, it shall be permissible in the following cases:

- (1) a general solicitation notification method has been used but no one has tendered a proposal or the proposals have not been selected;
- (2) it is a work which is complicated or very complicated;
- (3) it is a work involving designs or ideas such as structure models, as to which a State agency has insufficient information for setting preliminary details;
- (4) other cases as prescribed in the Ministerial Regulation.

Section 82. A specific method shall be for design or construction supervision work, whereby a State agency elects to hire a particular service provider whose proficiency has been known or witnessed at the recommendation of the committee in charge of procuring the design or construction supervision work by a specific method. In this regard, it shall be permissible in the following cases:

- (1) both a general solicitation notification method and a selection method have been used, or a selection method has been used, but no one has tendered a proposal or the proposals have not been selected;
- (2) it is the work of which the cost estimate for the construction does not exceed that prescribed in the Ministerial Regulation;
- (3) it is the work in respect of which there arises an urgent need or which is related to national security, where delay may prejudice the State agency or national security;
- (4) it is the work which, by technical reasons, needs to be performed by the original service provider in furtherance of the work previously performed;
- (5) other cases as prescribed in the Ministerial Regulation.

Section 83. A design competition method shall be for design or construction supervision work, whereby solicitation is made by a State agency to service providers possessing

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qualifications determined by the State agency for tendering proposals for designing construction work of special characteristics exhibiting national artistic or architectural value or other work as prescribed in the Ministerial Regulation.

Section 84. For the purpose of procuring design or construction supervision work under section 80, section 81, section 82 and section 83, the Minister may issue the Rule prescribing other additional details of design or construction supervision work as needed for the purpose of the execution thereof.

Section 85. The details of methods for procuring design or construction supervision work in this Chapter by an electronic method on an information network system of the Comptroller-General's Department shall be in accordance with the Rule prescribed by the Minister.

Section 86. The provisions of section 58 shall apply to design or construction supervision work in this Chapter *mutatis mutandis*.

Section 87. In hiring a provider of a service in relation to design or construction supervision work, the service provider must hold a licence for operating the architectural or engineering profession, as the case may be.

The service provider under paragraph one that is a juristic person must also be the person registered with the professional council concerned.

Section 88. A provider of a service in relation to design or construction supervision work that is a party to a contract with a State agency must not have any interest with the construction operator for such work, in accordance with the Rule prescribed by the Minister.

Section 89. In procuring each design or construction supervision work, the competent person shall appoint a design or construction supervision work committee to be in charge thereof.

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The composition, quorum and duties of a committee under paragraph one shall be in accordance with the Rule prescribed by the Minister.

Remuneration of a committee under paragraph one shall be as prescribed by the Ministry of Finance.

Section 90. In considering and selecting providers of design or construction supervision work, a State agency shall select the provider whose work concepts have achieved the highest score by reference to the quality considerations.

Rates of fees for a provider of design or construction supervision work shall be as prescribed in the Ministerial Regulation.

Section 91. The provisions of section 62 and section 66 shall apply *mutatis mutandis* to the preparation of solicitation notifications or solicitation letters to be extended to providers of design or construction supervision work for tendering proposals and the announcement of successful tenderers or selected persons.

Section 92. Details as to methods and procedures for design or construction supervision work not provided in this Chapter shall be in accordance with the Rule prescribed by the Minister.

CHAPTER IX CONCLUSION OF CONTRACTS

Section 93. A State agency shall conclude a contract in accordance with the forms prescribed by the Policy Commission with the approval of the Office of the Attorney-General. Such contract forms shall also be published in the Government Gazette.

It is permissible, where necessary, to conclude any particular contract with statements or particulars different from those in a contract form under paragraph one, provided that key substances thereof correspond to those provided in the contract form and do not place

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the State agency at disadvantage, except that where a State agency considers that there may be problems involving prejudicial effects or imprecision, it shall refer the contract in question to the Office of the Attorney-General for prior consideration and approval.

In the case where it is not possible to conclude a contract in accordance with the contract form under paragraph one and it is necessary to draft a contract afresh, such draft contract shall be referred to the Office of the Attorney-General for prior consideration and approval, except that a contract may be concluded in accordance with the form to which the Office of the Attorney-General has previously given approval.

In the case where it is necessary to conclude a contract in a foreign language, it shall be concluded in English, with a summary of key substances thereof in Thai in accordance with the rule prescribed by the Policy Commission as published in the Government Gazette, except that it is the conclusion of a contract in a foreign language in accordance with the contract form prescribed by the Policy Commission.

In the case where a State agency fails to conclude a contract in accordance with the contract form under paragraph one or fails to refer a draft contract to the Office of the Attorney-General for prior consideration and approval under paragraph two or paragraph three or under section 97 paragraph one, as the case may be, the State agency may subsequently refer such contract to the Office of the Attorney-General for consideration and approval. When the Office of the Attorney-General has given approval or when the Office of the Attorney-General has given approval with the requirement for amendment thereto, if amendment has been made by the State agency in conformity with the opinion of the Office of the Attorney-General, such contract shall be deemed to be valid.

In the case where a State agency fails to conclude a contract in accordance with the contract form under paragraph one, a State agency fails to make amendment to a contract in conformity with the opinion of the Office of the Attorney-General or a contractual party fails to agree or give consent to the amendment thereto in conformity with the opinion of the Office of the Attorney-General, if the contract term which differs from the contract form or the contract term which is not amended in conformity with the opinion of the Office of the Attorney-General constitutes a material part or constitutes a serious mistake under section 104, the contract shall be deemed to be void.

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Section 94. The conclusion of a contract by a State agency in a foreign country may be made in English or in the language of the country where such State agency is located, upon its consideration by an expert of the State agency.

Section 95. A contract concluded in the Kingdom must contain a term prohibiting a contractual party from subcontracting, whether in whole or in part, except partial subcontracting upon permission of the State agency as a contractual party. If a contractual party carries out subcontracting in violation of such term, there shall be imposed penalty therefor in an amount not less than ten percent of the value of the work to which the subcontracting relates.

Section 96. A State agency may conclude an agreement in writing without complying with the contract form under section 93 only in the following cases:

(1) where it is the procurement by a selection method under section 56 (1) (c) or the procurement by a specific method under section 56 (2) (b) (d) or (f) or the procurement of consultancy work by a specific method under section 70 (3) (b);

(2) where it is the procurement from a State agency;

(3) where a contractual party may make complete delivery of supplies within five working days as from the day following the date on which the agreement is concluded in writing;

(4) where it is a lease under which the lessee is not obligated to pay any money other than the rent;

(5) where it is any other case prescribed by the Policy Commission as published in the Government Gazette.

In the case where the procurement involves such a small cost estimate as prescribed in the Ministerial Regulation, an agreement in writing may be omitted provided that there shall be evidence of such procurement.

In issuing the Ministerial Regulation under paragraph two, small cost estimates may be prescribed differently in accordance with sizes or types of State agencies.

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Section 97. A written contract or agreement as concluded may not be amended except that in the following cases the competent person may, in his discretion, consider and approve amendment thereto:

- (1) it is the amendment under section 93 paragraph five;
- (2) it is the case where it is necessary to amend the contract or the agreement, if such amendment does not prejudice the State agency;
- (3) it is the amendment for the benefit of the State agency or public interests;
- (4) it is any other case as prescribed in the Ministerial Regulation.

In the case of amendment to a contract which, in the opinion of a State agency, may cause problems involving prejudicial effects or imprecision, such draft amendment shall be referred to the Office of the Attorney-General for prior consideration and approval.

Amendment to a contract or an agreement under paragraph one or paragraph two shall comply with the law on budgetary procedures or other relevant laws. If it is necessary to increase or reduce the cost estimate therefor or increase or reduce a period of time for delivery or a period of time for performance, the same shall be agreed upon concurrently.

In the case where amendment to a contract or an agreement is made for increasing the cost estimate, when its original cost estimate and the newly increased cost estimate have been united, if such total cost estimate results in a change in the person competent to approve the procurement, action shall also be taken for the person competent to approve the procurement in accordance with such total cost estimate to grant approval to the amendment to the contract or the agreement.

In the case where amendment to a contract or an agreement is made for reducing the cost estimate, the person competent to approve the procurement in accordance with the original cost estimate shall be the person granting approval to the amendment to the contract or the agreement.

Section 98. A State agency shall publish, for the dissemination purpose, key substances of signed contracts or agreements as well as amendment thereto on information network systems of the Comptroller-General's Department and of the State agency in accordance with the rules and procedures prescribed by the Comptroller-General's Department.

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Section 99. Details as to methods and procedures for the conclusion of contracts not provided in this Chapter shall be in accordance with the Rule prescribed by the Minister.

CHAPTER X
ADMINISTRATION OF CONTRACTS AND INSPECTION OF SUPPLIES FOR ACCEPTANCE

Section 100. In the execution of a contract or an agreement, the competent person shall appoint a supplies acceptance committee to be in charge of administering the contract or the agreement and inspecting supplies for acceptance thereof.

A composition, a quorum and duties of a supplies acceptance committee shall be in accordance with the Rule prescribed by the Minister.

In the case where the procurement involves such a small cost estimate as prescribed in the Ministerial Regulation, a particular person may be appointed as the person inspecting the supplies for acceptance thereof, with the same duties as those of the supplies acceptance committee, and the provisions of section 96 paragraph three shall apply *mutatis mutandis*.

The person in charge of administering contracts or agreements and inspecting supplies for acceptance thereof under paragraph one and paragraph three, not being the person appointed to assume a post involving the performance of duties in relation to procurement or supplies administration, shall be entitled to remuneration as prescribed by the Ministry of Finance.

Section 101. There shall be a supervisor, appointed by the competent person, of construction work which involves such gradual stages of operations as to require close supervision thereof or which involves instalment payments in accordance with the progress of the work, to be in charge of supervising such construction work.

The appointment, qualifications and duties of a supervisor of the work shall be in accordance with the Rule prescribed by the Minister.

Remuneration of a supervisor of the work under paragraph one shall be as prescribed by the Ministry of Finance.

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Section 102. The waiving or reduction of penalty for a contractual party or the extension of time for performance of a contract or an agreement may be, in the discretion of the competent person, granted in accordance with the number of days of actual occurrence of events in the following cases:

- (1) an event attributable to a fault or neglect of the State agency;
- (2) *force majeure*;
- (3) an event in consequence of any circumstance for which the contractual party is not liable under the law;
- (4) any other event as prescribed in the Ministerial Regulation.

The rules and procedures for application for the waiving or reduction of penalty in favour of a contractual party or the extension of time for the performance of a contract or an agreement shall be in accordance with the Rule prescribed by the Minister.

Section 103. The competent person may, in his discretion, terminate a contract or an agreement with a contractual party in the case of the occurrence of the following grounds for termination thereof:

- (1) a ground as prescribed by law;
- (2) a ground forming a belief that the seller or the contractor is unable to make delivery or complete the work within the time specified;
- (3) any other ground provided in this Act or in the contract or the agreement;
- (4) any other ground in accordance with the Rule prescribed by the Minister.

Agreement with the contractual party to terminate a contract or an agreement may be made by the competent person only in the case where it is directly beneficial to the State agency or it is for public interests or for rectifying disadvantages suffered by the State agency in the furtherance of such contract or agreement.

In the case where termination of a contract or an agreement is not made by a State agency or termination of such contract or agreement is made by a State agency without demanding penalty, as the case may be, if the contractual party considers that the State agency is liable for damages, the contractual party may submit an application to the State agency for considering payment of damages. In this regard, the State agency must issue a document

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acknowledging receipt of the application for the evidential purpose and consider the application without delay. When the State agency has given written notification of the result of the consideration, the contractual party dissatisfied therewith shall have the right to initiate an action before the Court for further claiming damages under the contract. The rules, procedures and period of time for the consideration by the State agency of applications shall be in accordance with the Rule prescribed by the Minister, provided that it shall at least require the State agency to appoint a committee for considering damages and the determination of the amount of damages required to be reported to the Ministry of Finance for consideration and approval.

Section 104. In the case where a contract or an agreement in connection with procurement has been proceeded on the basis of a State agency's failure to comply with this Act or a Ministerial Regulation, Rule or Notification issued under the provisions of this Act in any part dealing with immaterial matters or non-serious mistakes, the contract or agreement in connection with such procurement shall not be void.

The Policy Commission shall have the power to publish on an information network system of the Comptroller-General's Department examples of cases deemed to deal with material matters or serious mistakes or immaterial matters or non-serious mistakes under paragraph one.

In the case where there arises any problem in connection with voidness of the contract or the agreement under paragraph one, any contractual party shall refer the matter to the Policy Commission for final decision.

Section 105. Details as to methods and procedures for administration of contracts and inspection of supplies for acceptance thereof not provided in this Chapter shall be in accordance with the Rule prescribed by the Minister.

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CHAPTER XI
ASSESSMENT OF WORK PERFORMANCE OF BUSINESS OPERATORS

Section 106. For the benefit of a State agency, to ensure efficiency of the consideration and selection of tenderers of proposals for becoming contractual parties with the State agency, the State agency shall assess work performance of business operators participating in the procurement with the State agency.

The assessment of work performance under paragraph one shall be conducted by primarily considering the contractual party's ability to complete contractual performance.

Any business operator having the assessment result not satisfying the determined criteria shall be *pro tempore* suspended from tendering a proposal to or concluding a contract with the State agency until its performance result satisfies the determined criteria.

The rules and procedures for assessment of work performance of business operators under paragraph one, paragraph two and paragraph three shall be in accordance with the Rule prescribed by the Minister.

Section 107. The result of assessment of work performance of business operators under section 106 shall be deemed to be part of the criteria for considering and selecting tenderers of proposals to the State agency.

Section 108. In the case where it is deemed appropriate, the Minister may issue the Rule prescribing assessment of other performance apart from the ability to complete contractual performance, with a view to developing and improving efficiency of public procurement and supplies administration towards greater efficiency, and the provisions of section 106 paragraph three and paragraph four shall apply to the assessment of other performance *mutatis mutandis*.

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CHAPTER XII
WORK ABANDONMENT

Section 109. In the case where it is apparent that a tenderer of a proposal to, or a party to a contract with, a State agency performs conduct in the following cases, such tenderer or contractual party shall be deemed to commit an act amounting to abandonment of the work:

(1) where the tenderer of a proposal has been selected but refused to conclude a contract or an agreement in writing with the State agency within the time specified;

(2) where the party to a contract with the State agency or a sub-contractor allowed by the State agency to perform the sub-contracted work has failed to perform such contract or agreement in writing;

(3) where it appears that the tenderer of a proposal or the party to a contract with the State agency has committed an act essentially obstructing fair competition or committed an act in bad faith;

(4) where it appears that contractual performance of the consultant or the provider of design or construction supervision work has been deficient or erroneous or caused serious loss to the State agency;

(5) where it appears that the provider of design or construction supervision work or the construction operator has failed to comply with section 88;

(6) where there is any other conduct as prescribed in the Ministerial Regulation.

The Permanent Secretary for Finance shall have the power to issue orders proclaiming tenderers of proposals or contractual parties as work abandoners and shall circulate lists of work abandoners to State agencies for information and circulate the same on an information network system of the Comptroller-General's Department and notify it to work abandoners as well.

In the case where a juristic person is a work abandoner, if such conduct has resulted from its managing partner, managing director, executive or a person with the authority to operate the business of such juristic person, such person shall also be proclaimed, by order, as a work abandoner.

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The rules and procedures for issuing orders proclaiming tenderers of proposals or contractual parties as work abandoners and the circulation of lists of work abandoners shall be in accordance with the Rule prescribed by the Minister.

Section 110. A person proclaimed, by order, to be a work abandoner under section 109 may make an application for removal from the abandonment status, provided that it shall at least be in accordance with the rules as follows:

- (1) such person is of secure financial standing;
- (2) such person has made due payment of taxes under the law; and
- (3) the period of time for the circulation of a list of work abandoners under the Rule prescribed by the Minister has elapsed.

The rules and procedures for the application for removal from the abandonment status and the consideration as to whether to grant removal from the abandonment status shall be in accordance with the Rule prescribed by the Minister.

Section 111. Upon the circulation of lists of work abandoners under section 109, a State agency shall not proceed with procurement with work abandoners, including a juristic person of which the work abandoner is a managing partner, managing director, executive or the person with the authority to operate the business, unless removal from the abandonment status has been granted under section 110.

CHAPTER XIII SUPPLIES ADMINISTRATION

Section 112. A State agency shall put in place the control and supervision of supplies in its possession to ensure that the use and administration thereof shall generate greatest appropriateness, value for money and utility to the State agency.

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Section 113. The pursuit of activities under section 112, including the retention, recording, disbursement, loans, inspection, maintenance and disposal of supplies, shall be in accordance with the Rule prescribed by the Minister.

CHAPTER XIV APPEALS

Section 114. A person having tendered a proposal to a State agency for procurement of supplies has the right to submit an appeal in connection with the procurement in the case where such person considers that failure by the State agency to comply with rules and procedures provided in this Act, Ministerial Regulations, Rules or Notifications issued under the provisions of this Act has resulted in his not being announced as the successful tenderer or his not being selected as a party to a contract with the State agency.

Section 115. The person entitled to appeal shall not submit an appeal in the following matters:

- (1) the selection of procurement methods or criteria for considering the procurement under this Act by a State agency;
- (2) the cancellation of the procurement under section 67;
- (3) failure to make reference, in solicitation notifications, documents or letters of a State agency, to this Act or any Ministerial Regulation, Rule or Notification issued under this Act insofar as it directly deals with the procurement;
- (4) any other matters as prescribed in the Ministerial Regulation.

Section 116. An appeal must be made in writing and signed by the appellant.

The appeal in writing under paragraph one must be politely worded, with clear indication of facts and reasons forming the basis of the appeal, and must also be accompanied by relevant documents and evidence.

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In the case where it is deemed appropriate, the Minister may also issue the Rule otherwise prescribing procedures for appeals or other details as to appeals.

Section 117. The person entitled to appeal shall submit an appeal to the State agency concerned within seven working days as from the date on which the result of the procurement is announced on an information network system of the Comptroller-General's Department.

Section 118. The State agency shall complete its consideration and decision upon an appeal within seven working days as from receipt thereof. In the case of its opinion in agreement with the appeal, the matter shall be proceeded in accordance with such opinion within such period of time.

In the case where the State agency is of an opinion in disagreement with the appeal, whether in whole or in part, a reasoned report on such opinion shall expeditiously be furnished to the Appeals Committee under section 119 within three working days as from the expiry date under paragraph one.

Section 119. Upon receipt of the report from the State agency under section 118, the Appeals Committee shall complete its consideration of the appeal within thirty days as from the date of receipt thereof. If the consideration of any matter may not be completed within such time limit, the Appeals Committee may extend the period of time on not more than two occasions of fifteen working days each as from the expiration thereof and shall notify it to the appellant and the person who is successful in the procurement or who is selected.

In the case where the Appeals Committee is of the opinion that the appeal is tenable and has material effects on the procurement, the Appeals Committee shall give an order to the effect that the State agency shall carry out the procurement anew or re-commence the procurement from any particular process as it deems appropriate. In the case where the Appeals Committee is of the opinion that the appeal is not tenable or has no material effects on the procurement, the Appeals Committee shall notify the State agency for further proceeding with the procurement.

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The decision of the Appeals Committee shall be final.

In the case where, after the expiration of the period for the consideration of the appeal under paragraph one, the Appeals Committee fails to complete its consideration, the matter shall be discontinued and the Appeals Committee shall notify it to the appellant and the person who is successful in the procurement or who is selected and shall also notify the State agency to proceed with the procurement.

Any appellant who is not satisfied with the decision of the Appeals Committee or the discontinuance of the matter under paragraph four and is of the opinion that the State agency shall be liable to pay damages has the right to institute an action before the Court for claiming damages from the State agency, provided that such institution of an action is not prejudicial to the procurement in respect of which a contract therefor has been signed by the State agency.

CHAPTER XV PENALTIES

Section 120. Any person who, being an official or being the person with the authority in connection with the procurement or supplies administration, unlawfully performs or omits to perform the duty in the procurement or supplies administration under this Act or a Ministerial Regulation, Rule or Notification issued under the provisions of this Act with a view to causing loss to any particular person or dishonestly performs or omits to perform the duty in the procurement or supplies administration under this Act or a Ministerial Regulation, Rule or Notification issued under the provisions of this Act shall be liable to imprisonment for a term of one year to ten years or to a fine of twenty thousand to two hundred thousand Baht or to both.

Any person who is an instigator or an aider and abettor for the commission of the offence under paragraph one shall be liable to the penalty provided for the offence under paragraph one.

Section 121. Any person who fails to comply with an order of the Ruling Committee under section 31 or an order of the Appeals Committee under section 45 shall be,

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when the Ruling Committee or the Appeals Committee, as the case may be, considers that it is the failure of compliance without any justifiable reason, guilty of an offence of obstructing an order of an official under the Penal Code and legal proceedings shall further be taken against such person.

TRANSITORY PROVISIONS

Section 122. The Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) and the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006) and all Rules, Regulations, Notifications, Ordinances and requirements relating to supplies, procurement or supplies administration of other State agencies which are under the application of the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) or the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006), as the case may be, and also resolutions of the Council of Ministers relating to supplies, procurement or supplies administration of State agencies shall continue to be in force insofar as they are not contrary to or inconsistent with this Act until Ministerial Regulations, Rules or Notifications on particular matters are issued under this Act and come into force.

The issuance of Ministerial Regulations, Rules or Notifications under paragraph one shall be completed within one year as from the date on which this Act comes into force. If their completion cannot be achieved, the Minister shall report the reasons therefor to the Council of Ministers for information.

Section 123. In the case where the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) or the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006) or any Rules, Regulations, Notifications, Ordinances or requirements relating to supplies, procurement or supplies administration of other State agencies not under the application of the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) or the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006), as the case may be, and resolutions of the Council of Ministers relating to supplies, procurement or

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supplies administration of State agencies may not apply to any matters under section 122, proceedings by State agencies on such matters shall be as prescribed by the Policy Commission. In this regard, in the case where qualified members have not yet been appointed, the Policy Commission shall consist of the total existing members until qualified members are appointed.

Section 124. In the case where the Policy Commission has not yet issued the Notification under the provisions of section 7 paragraph two or the Policy Commission has already issued the Notification under the provisions of section 7 paragraph two but the State agency has not yet issued the by-law or Rule under the provisions of section 7 paragraph four, the procurement under section 7 (1), (2) and (3) shall be in accordance with the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) and the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006) and all Rules, Regulations, Notifications, Ordinances or requirements relating to supplies, procurement or supplies administration of other State agencies not under the application of the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) or the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006), as the case may be, and resolutions of the Council of Ministers relating to supplies, procurement or supplies administration of State agencies, until the Notification issued under the provisions of section 7 paragraph two or the by-law or Rule issued under the provisions of section 7 paragraph four, as the case may be, is issued and comes into force.

In the case where the Policy Commission has already issued the Notification under the provisions of section 7 paragraph two but any State agency has not yet issued the by-law or Rule under the provisions of section 7 paragraph four, if such State agency has not issued the by-law or Rule under the provisions of section 7 paragraph four within one hundred eighty days as from the date on which the Notification of the Policy Commission issued under the provisions of section 7 paragraph two comes into force, the procurement under section 7 (1), (2) or (3), as the case may be, of such State agency shall be pursued in accordance with this Act.

Section 125. In the initial period, the Focal Prices Committee shall complete issuance of the Notification prescribing rules and procedures for the determination of focal prices

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and the registration of business operators eligible for tendering proposals to State agencies under section 34 (1) and (7) within ninety days as from the date on which this Act comes into force.

While the Notification under paragraph one is not yet in existence, the rules and details pertaining to the calculation of focal prices for construction work prescribed by the Committee in charge of rules on and inspection of focal prices for construction work appointed by the Council of Ministers or other rules prescribed by State agencies prior to the date on which this Act comes into force shall apply and shall be deemed to be the rules and procedures for the determination of focal prices under this Act until the Notification under paragraph one is in existence, and the Committee in charge of rules on and inspection of focal prices for construction work appointed by the Council of Ministers shall continue to perform its duties until the Focal Prices Committee under this Act takes office.

Section 126. In the initial period, the A.C.C. Committee shall expeditiously complete issuance of the Notification prescribing directions and procedures for the pursuit of programmes on public procurement anti-corruption co-operation, the form of an integrity pact and the form of a report of observers, the selection of procurement projects and the selection of observers under section 39 (1), (2), (3) and (4).

In the course of the execution of paragraph one, the directions for the pursuit of programmes on public procurement anti-corruption co-operation, the form of an integrity pact and the form of a report of observers, the selection of procurement projects and the selection of observers as prescribed by the Anti-corruption Co-operation Committee appointed by the Council of Ministers prior to the date on which this Act comes into force shall apply and be deemed as the directions and procedures for the pursuit of programmes on public procurement anti-corruption co-operation, the form of an integrity pact and the form of a report of observers, the selection of procurement projects and the selection of observers under section 39 (1), (2), (3) and (4) and the Anti-corruption Co-operation Committee appointed by the Council of Ministers shall continue to perform its duties until the A.C.C. Committee under this Act takes office.

Section 127. The Procurement Commission under the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) and the Electronic Procurement Commission

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under the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006) and committees under Rules, Regulations, Notifications, Ordinances or requirements of other State agencies not under the application of the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) or the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006), as the case may be, shall continue to perform duties until the Policy Commission, the Ruling Committee or the Appeals Committee, as the case may be, under this Act takes office.

In the case where the Ruling Committee under this Act has taken office but no Ministerial Regulation, Rule or Notification issued under the provisions of this Act has entered into force, the duty to interpret and decide issues in connection with the implementation of the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) and the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006) and all Rules, Regulations, Notifications, Ordinances or requirements relating to supplies, procurement or supplies administration of other State agencies not under the application of the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) or the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006) shall remain the duty of the Procurement Commission and the Electronic Procurement Commission and the committees under the Rules, Regulations, Notifications, Ordinances or requirements of such State agencies, except that the duty to interpret and decide the issue as to whether such Rules, Regulations, Notifications, or requirements are contrary to or inconsistent with this Act or are in line with the directions embodied in this Act or not shall be the duty of the Ruling Committee under this Act.

The provisions of paragraph two shall apply *mutatis mutandis* to the case where the Focal Prices Committee and the A.C.C. Committee under this Act have taken office but Notifications under the provisions of this Act have not yet been issued.

Section 128. Procurement or supplies administration carried out in accordance with the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) or the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006) or Rules, Regulations, Notifications, Ordinances or requirements relating to supplies, procurement or supplies administration of other State agencies not under the application of the Rule of the Office of the

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Prime Minister on Procurement, B.E. 2535 (1992) or the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006), as the case may be, and resolutions of the Council of Ministers relating to supplies, procurement or supplies administration of State agencies prior to the date on which this Act comes into force and prior to the completion of the acceptance and payment shall be further pursued in accordance with the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) or the Rule of the Office of the Prime Minister on Electronic Procurement, B.E. 2549 (2006) or Rules, Regulations, Notifications, Ordinances or requirements relating to supplies, procurement or supplies administration of such State agencies and resolutions of the Council of Ministers relating to supplies, procurement or supplies administration of State agencies except that in the case where such procurement or supplies administration has not yet been published on an information network system of the Comptroller-General's Department or of the State agency for soliciting business operators to tender proposals to the State agency or in the case where such procurement or supplies administration has been cancelled, such procurement or supplies administration or new procurement or supplies administration, as the case may be, shall be pursued in accordance with this Act.

Section 129. In the initial period, the Comptroller-General's Department shall expeditiously complete registration of business operators eligible for tendering proposals for construction work of State agencies under section 51 paragraph one as from the date on which the Focal Prices Committee designates fields of construction work under section 51 paragraph one or the date on which the Focal Prices Committee prescribes a particular amount of money for construction work of particular fields or requires performance by professionals in particular fields under section 51 paragraph two, as the case may be.

While the registration of business operators eligible for tendering proposals for construction work of State agencies under paragraph one remains unfinished, State agencies shall be exempted from compliance with section 51 paragraph one or paragraph two, as the case may be, except that in the case where any State agency has prepared a list of pre-qualified construction operators prior to the date on which this Act comes into force, such State agency shall continue to use the list of pre-qualified construction operators so prepared by it and it shall be deemed to be the registration of business operators eligible for tendering proposals for

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construction work of State agencies under section 51 paragraph one until a list of business operators eligible for tendering proposals for construction work of State agencies under section 53 paragraph one is published.

Section 130. The list of consultants registered with the Consultants Information Centre of the Ministry of Finance under the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) prior to the date on which this Act comes into force shall be deemed to be the list of consultants registered with the Consultants Information Centre of the Ministry of Finance under this Act.

Section 131. The list of work abandoners under the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) in existence prior to the date on which this Act comes into force shall be deemed to be the list of work abandoners under this Act.

Proceedings for issuing orders proclaiming persons to be work abandoners on the ground of conduct amounting to work abandonment under the Rule of the Office of the Prime Minister on Procurement, B.E. 2535 (1992) prior to the date on which this Act comes into force shall be pursued by reference to the conduct amounting to work abandonment under this Act.

Section 132. The Ministry of Finance, the Comptroller-General's Department, the Office of the Public Sector Development Commission, the Office of the Civil Service Commission, the Bureau of the Budget and other agencies concerned shall, within sixty days as from the date on which this Act comes into force, jointly prepare a structure of the Comptroller-General's Department and a manpower framework for its Government officials and Government employees and determine its budget as well as other necessary activities in support of operations within the powers and duties of the Comptroller-General's Department under this Act.

Countersigned by:

General Prayut Chan-o-cha
Prime Minister

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