

CHAPTER 4 FINANCIAL REGULATIONS OF THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

4.1 Introduction

The Financial Regulations (F.R.) of the Government of Sri Lanka is prepared by the Ministry of Finance (1992).

The objectives of Financial Regulations are

- (a) to have a comprehensive set of rules and procedures to make fairness among the prospective bidders, thereby encouraging more and more people to come into the industry
- (b) to have a clear and simple procedures for high competitiveness and thereby reduction in the project cost.
- (c) to have transparency on the government policies and practices which will contribute to develop the industry.

Statutory Bodies and all State Employees should

Even in Government Corporations, these

unless they have duly adopted their own financial

In the case of Divisional Secretariats, the regulations will apply in addition to the Guidelines already issued by the General Treasury. The Financial Regulations will, however, over-ride the Guidelines, if there is any discrepancy.

The Financial Regulation consist of 14 chapters, namely,

1. Estimates of Expenditure and Revenue
2. Authorities for Expenditure, Refunds, Write-offs, etc.
3. Financial Management and Accountability
4. Receipts'
5. Payments
6. Custody of Public Money, etc. Imprests Bank Accounts
7. Accounting
8. Advance Accounts
9. Kachcheri Accounts
10. Accounts of Courts
11. Foreign Aids
12. Printing and Publication
13. Supplies, Works and Services
14. Miscellaneous



These Regulations have been laid down by the Government for the carrying out of its financial transactions in an orderly manner and are not intended to be obstructions to the execution of Government Programme of works.

However, when one sticks to the procedures strictly, it may hinder the smooth progress of projects. Contradictory information may lead to stoppages. Some F.R provisions may not be practicable to implement in open economy competitive environment. Standard Contract Conditions may have provisions which contradicts the F.R . Therefore a review is necessary to study the F.R to see whether any lapses. This research has highlighted these lapses in view of comparing with the standard practices and to make recommendations where necessary.


4.2 Application of Financial Regulations to the Standard Procedures of Procurement.

The rules and regulations of the F.R. have been studied in detail and the relevant administration requirements were established under the standard procurement procedure established in 2.3.

4.2.1 Project Strategy

There are few F.R provisions to be adhered to during the formation of the project.

According to F.R 688, for Contract values exceeding Rs. 2 million, approval should be taken from the Ministry Tender Board for all tender documents. i.e.

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- (i) The tender notice
 - (ii) The conditions of tenders
 - (iii) The form of tender
 - (iv) Departmental estimate of cost

As per F.R 688(2)(a) the head of the Department, before submitting the documents to the Ministry Tender Board for approval, should see;

- that appropriate provision exists for carrying out the work or obtaining the service
- that the necessary plans, specifications and bills of quantities have been prepared.

As per F.R 688(2), sufficient time has to be given for the tenderers to tender. Normally not less than three weeks should be given for tenders published in Sri

Lanka only, and six weeks in respect of tenders published on a world-wide basis. Duration for other activities are not being covered under F.R.

As per Public Finance Circular No. 332 dated 18/07/1994, the tender board authority limits are as follows:

(a) World Bank and ADB funded projects

- (i) Up to Rs. 50 million - Departmental or Institutional Tender Board
- (ii) Rs. 50 to 100 million - Ministry Tender Board
- (iii) Over Rs. 100 million - Cabinet Appointed Tender Board

(b) For all other projects including fully or partly foreign funded projects.

- (i) Up to Rs. 10 million - Departmental or Institutional Tender Board
- (ii) Rs. 10 to 20 million - Ministry Tender Board
- (iii) Over Rs. 20 million - Cabinet Appointed Tender Board

As per F.R. 687 (I) The composition of Tender Boards should be as follows;

(a) The composition of Departmental Tender Boards shall be as prescribed by the Secretary of the Ministry concerned.

(b) The Composition of Ministry Tender Boards.

Chairman shall be the Secretary of the Ministry Concerned, or nominee; second member shall be the Head of the Department calling for tenders or nominee; and third member should be an officer from a department specialised in the field or the Head of the PASU or his representative. (Procurement and Advisory Services Unit of Ministry of Finance)

- (c) As per F.R. 686 (d) The composition of Cabinet appointed Tender Board. The Secretary to the Cabinet will appoint the Tender Board. A Treasury Representative will serve on the Tender Board.

The Secretary to the Ministry of Finance will appoint an Evaluation/Technical Committee.

4.2.2 Prequalification of Tenderers

Approval has to be taken for all the prequalification and tendering documents from the Ministry tender board if the value exceeds Rs. 2 million. (F.R 688)

According to F.R. 690, the Ministry Tender Board, with the permission of the Secretary to the Ministry concerned, can keep registers of contractors, who are capable of carrying out specific works, and confine the issue of tender notices to names appearing on these registers. Arrangements should be made to enable contractors whose names are not on the registers to apply to have their names inserted, so that the registers are kept as complete as possible.

According to F.R. 690(2) a Tender Board may require tenderers to produce a certificate of worth or proof that they possess adequate equipment and competent staff before they are issued tender forms.

4.2.3 Obtaining Tenders

As per F.R. 688(2) The Head of the Department, before submitting the documents to the Ministry Tender Board for approval, should see;

- that the departmental estimates of costs is prepared as accurately and completely as possible.

- that where samples are required, adequate provision is made in the Tender Notice or the Conditions of Tender for submission of samples by the tenderers.
- that sufficient time has been given for the tenderers to tender. Normally not less than three weeks should be given for tenders published in Sri Lanka only, and six weeks in respect of tenders published on a world-wide basis.
- that the period for which offers are to be kept open is adequate,
- that the security for the contract is adequate and reasonable and the submission of a Performance Bond is stipulated where necessary,
- that the Tender Notice and Tender Conditions are so framed as to ensure that only tenderers who are competent to perform a work or render a service are issued tender forms,
- that in cases where tenderers are expected to install plant in working order, the necessary guarantees are precisely worded and
- that the appropriate provisions of F.R. 689, where necessary, are provided for

As per F.R. 692(1)

- (a) deposits to be made before tender forms are issued, should not be unduly high and should be consistent with the object of preventing frivolous or irresponsible tendering.

- (b) Deposits or guarantees to be made before the final contract is entered into should be adequate without being excessive.
- (c) A guarantee of a Bank or Institution approved from time to time by the Treasury for this purpose, may be accepted, in lieu cash deposits.

Provisions for following deviations from the normal Tender procedure is allowed in F.R.R.

As per F.R. 690(1) a Tender Board may, with the authority of the Secretary to the Ministry Concerned, prepare registers of contractors who are capable of constructing works of specified description, magnitude or value and confine the issue of Tender Notices to names appearing on these registers.

As per F.R 698, whenever Approved societies tender in open competition, for works or services, they should be allowed preference upto 5%, over the lowest tender (if the lowest tender is not from an Approved Society)

The "Approved Societies" for this purpose are;


- (i) Co-operative Societies
- (ii) Co-operative Labour Societies
- (iii) Rural Development Societies approved by the Director of Rural Development
- (iv) Gramodaya Mandalayas
- (v) Any other Societies specified by the Treasury from time to time



According to F.R. 693,

- (a) Tender documents should be approved by the authority competent to deal with tenders in terms of Public Finance Circular No 332 dated 18/07/1994.
- (b) Every tender notice should be published at least once in the Government Gazette.
- (c) Tender notices should be published in approved newspapers in terms of F.R. 677

According to F.R. 694 following has to be maintained

- (i) The Department should maintain an office where tender documents can be inspected.  Electronic Theses & Dissertations
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- (ii) Tender documents may be inspected free of charge
- (iii) Tender forms shall be issued in duplicate. Subject to the provisions of F.R. 692(2) no tender forms shall be issued unless the required deposit has been paid to the Government.
- (iv) No tender forms shall be issued to any person whose name appears on the list of defaulting contractors.

According to F.R. 695 Tenders shall be submitted in duplicate on the approved form and should be enclosed in sealed envelopes.

Tenders may be submitted in either through' the post, preferably under registered cover or by personal delivery to an officer authorized by the tender board to receive tenders.

As per F.R. 695, the person who delivers the tender is entitled to a receipt. In either event above, the officer who receives the tenders should deposit them immediately on receipt in the Tender Box.

The Tender Box should be so constructed as not to permit tampering.

Tenders should normally close at 10.00 am on the date specified in the Tender Notice. Immediately after the tenders close, the Tender Box will be cleared and all tenders received will be opened by, or under the immediate supervision of the Chairman of the Tender Board, or his nominee. The tenders will be numbered consecutively and will forthwith be authenticated by the initials of the officer opening them, together with the date on which they were opened.

As per F.R. 799, owing to urgent and exceptional circumstances, deviations from normal tender procedure is allowed within the prescribed limits of authority given below; provided that the reasons for such necessity are explicitly recorded in writing.

<u>Competent Authority</u>	<u>Limit</u>
(a) Head of the Department His personal approval	Upto Rs. 50,000 (A class Dept.) Upto Rs. 25,000 (Other Dept.)
(b) Departmental Tender Board (Subject to the personal approval of the Head of the Dept.)	Upto Rs. 2,000,000
(c) Ministry Tender Board	Upto Rs 5,000,000

(Subject to the personal approval
of the Secretary of the Ministry
concerned)

d) Cabinet of Ministers

Above Rs. 5,000,000

4.2.4 Opening of Tenders

According to F.R. 695 tenders should be normally closed at 10.00 a.m. on the date specified in the tender notice. At that time all the tenders received will be opened or under the immediate supervision, of the Chairman of the Tender Board, or by an officer nominated by the Chairman. Any tender which is received later than the closing time should be rejected.

The tenderers or their representatives should be allowed to be present, and it should be so indicated in the tender notice or conditions of tender. The tenderers present should be recorded. The names of the tenderers and the respective amounts of the tenders should be announced. Any tenderer should be permitted, if he so wishes, to examine the duplicate of any tender that has been submitted, only for the purpose of verifying the amount.

4.2.5 Evaluation of Tenders

According to F.R. 696, a schedule of tenders should be prepared as early as possible, to be submitted to the Tender Board. The Head of the Department will send the schedule of tenders and the original tenders, together with a report to the Tender Board including the following

- (a) a certificate that funds are available
- (b) the estimated cost of the work, supply or service
- (c) a recommendation as to which tender should be accepted

- (d) if a tender other than the lowest is recommended, the reasons, why the lower tenders are not acceptable.

As per F.R. 696(2), the Head of the Department should ensure that the offers are arithmetically correct, complete and in conformity with specifications and other conditions in the Tender Notice and Documents.

As per F.R. 699 a Tender Board may avail itself of the services of a Technical/Financial evaluation committees where necessary.

As per F.R.697(3) preference of 20% should be given to locally manufactured articles over the lowest rate quoted for the supply of imported articles.

As per F.R. 697(4) Tender Board should compare Tenders received with departmental cost estimates. Tenders which are considerably higher than the departmental estimate should normally be rejected. If the tenders are all excessively high, then reject all tenders and fresh tenders be called for.

As per F.R.697(5) by and large a Tender Board should accept the lowest evaluated tender which satisfies all conditions, specifications etc. of tender; and should accept only with the personal approval of the

- (a) Head of the Department in the case of tenders not exceeding Rs. 2,000,000 in value,
- (b) Secretary to the Ministry concerned in the case of tenders between Rs. 200,000 and Rs, 5,000,000 in value
- (c) Cabinet in the case of tenders in excess of Rs. 5,000,000 in value.


No tender other than the lowest should be accepted; and that too only if such lowest tender satisfies all requirements.

As per F.R. 697(6) All tenders which are not in conformity with the stipulated specifications and conditions of tender should be rejected.

As Per F.R. 697 (7) If negotiations in regard to variations or any other matter pertinent to the tender to be conducted after the tenders have been opened, the Tender Board should conduct such negotiations only after due notice to all the tenderers. A full record of all such negotiation should be maintained.

According to F.R 699 a tender board may get the service of a Technical/Financial Evaluation Committee where necessary.

As per Public Finance Circular No. 332 dated 18/07/1994, the tender board authority limits are as follows:

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- (a) World Bank and ADB funded projects
 - (i) Up to Rs. 50 million - Departmental or Institutional Tender Board
 - (ii) Rs. 50 to 100 million- Ministry Tender Board
 - (iii) Over Rs. 100 million- Cabinet Appointed Tender Board

 - (b) For all other projects including fully or partly foreign funded projects
 - (i) Up to Rs. 10 million - Departmental or Institutional Tender Board
 - (ii) Rs. 10 to 20 million - Ministry Tender Board
 - (iii) Over Rs. 20 million - Cabinet Appointed Tender Board

According to F.R. 697 the Tender Board shall have power

- (a) to accept any tender, or portion of a tender
- (b) to accept portions of more than one tender
- (c) to reject all or any tenders

- (d) to apply the provisions of F.R 698 (i.e. general preferences to approved societies)
- (e) when all tenders have been rejected, or no tenders are received, to direct
 - that fresh tenders be called for; or
 - that departmental arrangements be made for carrying out any works prescribed in the tender notice; if facilities are available

4.2.6 Award of Contract

As per F.R. 697(5) a Tender Board should accept the lowest evaluated tender which satisfies all conditions, specifications etc. of tender and personal approval should be taken from the Head of the Department (Institution) in case of tenders not exceeding Rs. 10 million in value, Secretary to the Ministry concerned in the case of tenders between Rs. 10 million and 20 million in value, Cabinet in the case of tenders in excess of Rs. 20 million.



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As per F.R. 700(1), the final decision of the Tender Board will be notified to the Department concerned by the Chairman of the Board. The Department should take necessary action for the completion of the formal contract with the successful tenderer as early as possible.

As per F.R. 700(3), unsuccessful tenderers, except the lowest three, should be informed by letter that their tenders have not been accepted. Their tender deposits should be refunded at the same time or immediately afterwards.

As per F.R. 700(6), Department should publish in the earliest possible issue of the Government Gazette the following particulars in regard to the tenders on which a final decision has been taken.

- (a) The description of the items for which tenders were called.
- (b) The total number of tenders received.

- (c) The name of the successful tenderer.
- (d) The amount at which the tender was awarded
- (e) In the case of a tender awarded to a foreign principal who has a local agent, the name of the local agent.
- (f) The amount payable as local agent's commission

In case of tenders in excess of Rs. 200,000/= the above particulars should be published in the newspapers too.

According to F.R. 701 the contract should contain clauses relating to the following;

- (a) Security
- (b) Time of Completion
- (c) Liquidated damages for delays
- (d) The designation of the officer authorized to make decisions on the contract.
- (e) The currency and precise method of payment for work done, including moneys held back
- (f) The Employment of Sri Lankan Labour (F.R.691(2))
- (g) Insurance if any
- (h) Variations of contract
- (j) Procedure including cancellation and forfeiture of deposit if contract is not properly carried out
- (k) The application of the Laws of Sri Lanka to the contract

Care should also be taken to ensure that the basis of the contract is clearly defined.

As per F.R. 702 contract should be prepared and signed with the least possible delay on the forms approved by the Attorney General.



The officer signing the contract on behalf of the Government shall be as follows;

- (a) Contract value over Rs. 500,000/= - The Head of the Department
- (b) Contract value less than Rs. 500,000/= - The Head of the Department or the staff officer nominated by the Head of the Department.

All relevant documents such as the tender notice, the statement of conditions etc., the letter from the party tendering, the tender schedule of prices or quotations, the plans, specifications, agreement bond, will form part of the complete contract. Both parties signing the contract should authenticate each of the above documents when they form annexes to the main agreement. All corrections should be initialed by both parties.

Contract should be signed in triplicate. One copy should be handed to the Contractor, one copy forwarded to the Auditor General and one kept by the Department.

4.3 Application of Financial Regulations to the Standard Procedures of Contract Administration

4.3.1 Supervision

As per F.R 703 (1) (a), the Head of the Department will be responsible for ensuring that Works or Services is properly supervised.

As per F.R. 703 (2) (a), a contract once entered into cannot be assigned or sub-let, nor any conditions varied without prior approval of the appropriate authority under F. R. 686.

As per F.R.703 (2) (b), a works contract entered into with an Approved Society should not in any case be assigned or sub-let.

4.3.2 Measurements

As per F.R 20 (2) The Total Cost Estimate of each project should be determined on the basis of a carefully priced Bill of Quantities which is supported by detailed schedules showing requirements of materials, labour, plant, and equipment utilization and schedules of prices on which the Bill of Quantity rates were arrived at. There should be supporting documents to monitor price changes and translate them to rate changes, as a matter of routine, for use if needed. The Total Cost Estimate prepared for Examination of Work Proposals in terms of Financial Regulations should be prepared on this basis adding 10% for Contingencies and a further 10% to allow for escalation of prices within that year. If the Work has to be phased over more than one year, the allowance for price escalation should be 10% for the first year, 20% for the second year, 30% for the third year and so on, in respect of the Work to be done in each year. The allowance for Contingencies and price escalation should be indicated separately in the preparation of Total Cost Estimate and should not be disclosed even at the time of calling for tenders or at negotiation with the Contractors, when the exact approved Total Cost Estimated (excluding these percentages) should be used.

As per F.R.703 (i) (a), The Head of the Department will be responsible for ensuring that works or services is properly supervised and assessed for the purpose of making part and final payments.



4.3.3 Variations and Valuation

Variations will cause an increase in cost, hence the TEC should be revised.

As per F.R 704 (3), if in approving the above provisions, the Total Cost Estimate, as shown in the Annual Estimates, is likely to be exceeded, appropriate authority, as indicated in F.R.72 should be obtained.

The authority requirements as per F.R 72 are as follows

- (1) the Total Cost Estimates of any project shall not be exceeded during the financial year without authority in terms of (2) below. Departments should apply for the necessary authority as soon as an increase in cost is anticipated.
- (2) When it is found that the Total Cost Estimates of the Works will be exceeded, authority should be obtained as follows to increase Total Cost Estimates.
 - (a) an increase upto 10% but not exceeding Rs. 25,000/= approval of the Head of the Department.
 - (b) an increase upto 20% but not exceeding Rs. 500,000/= approval of the Chief Accounting Officer who is a Secretary to a Ministry.
 - (c) an increase upto 25% but not exceeding Rs.2,500,000/= approval of the Secretary to the Treasury or Deputy Secretary to the Treasury.
 - (d) an increase over 25% but not exceeding Rs 2,500,000/= approval of the Minister of Finance.
 - (e) an increase exceeding Rs. 2,500,000/= approval of the Cabinet.

A comparative statement should accompany every application for authority to revise the Total Cost Estimate.

4.3.4 Payments

As per F.R. 703 (i) the Head of the Department will be responsible for ensuring that the Works, Supply or Services is properly supervised and assessed for the purpose of making part or final payments.

4.3.5 Extensions

As per F.R. 703 (i) (b), extensions of time may be granted, when reasonable, by the officer authorized to do so. They should not be refused on the ground that extension of time will be considered later with the question of waiver of liquidated damages.

As per F.R. 704 (i) (b), the Secretary to the Ministry concerned has the authority to waive liquidated damages or contract conditions in suitable cases.

4.3.6 Claims

As per F.R. 704 (1) (d), the Secretary to the Ministry concerned has the authority to approve extra-contractual payments. In the case of the Department of Buildings the Secretary to the Ministry may delegate, if he so desires, authority to the Director of Buildings, to approve extra-contractual payments upto 10% of the value of each contract.

As per F.R. 704 examples for extra-contractual claims are given below:

(a) A contract provides that all timbering charges are to be met by the contractor; payment in respect of special shuttering and shoring necessitated by bad ground encountered in excavation is extra-contractual.

(b) A transmission line in course of erection is damaged by storm; payment for re-erection is extra-contractual if this is not covered by specific provision in the contract.

(c) A contract for transport of mails does not specifically provide for alternative arrangement in the event of interruption of traffic through floods; payment for additional mileage run owing to deviation of route due to this course is extra-contractual.



As per F.R 704 (3), if in approving the above provisions, the Total Cost Estimate, as shown in the Annual Estimates, is likely to be exceeded, appropriate authority, as indicated in F.R.72 should be obtained.

4.3.7 Dispute Resolution

As per F.R 704 (1) (c), the Secretary to the Ministry concerned has the authority to agree to arbitration on the request of the Contractor.

Arbitration Act No. 11 of 1995 (Department of Government Printing, 1995) was published as a supplement to Part II of the Government Gazette of June 30, 1995. This Act provides the conduct of Arbitration Proceedings, Recognition and Enforcement of Foreign Arbitral Awards, to repeal the Arbitration Ordinance and certain Sections of the Civil Procedure Code.

Under this Act it is necessary to make comprehensive legal provision for the conduct of arbitration proceedings and the enforcement of awards made thereunder, and also to make legal provision to give effect to the principles of the convention on the recognition and enforcement of foreign arbitral awards.

This Act gives a comprehensive coverage on conduct of arbitration proceedings, awards and appeals under the following headings;

1. Preliminary
2. Arbitration Agreement
3. Composition of the Arbitral Tribunal
4. Jurisdiction of Arbitral Tribunal
5. Conduct of Arbitration Proceedings
6. Award
7. Application to Courts relating to Awards (including recognition and enforcement of foreign awards)
8. Proceedings before the High Court
9. General provisions as to Arbitration

4.3.8 Termination

As per F.R 705, in every case involving a tender or contract of the value of over Rs. 25,000/= in which the successful tenderer.

- (a) declines or fails to enter into contract, or
- (b) fails to carry out his contract in the satisfactory manner, or
- (c) is guilty of improper conduct

The Head of the Department concerned shall serve on him a written notice requiring him to show cause in writing, within one month, why his name should not be included in the list of defaulting contractors. If the Head of the Department is not satisfied with the explanation furnished, he should report the full particulars to the Ministry Tender Board with his own recommendations.

No F.R. has been issued to cover the termination aspect of a contract.

4.3.9 Completion

As per F.R 703 (1) (c), Works should not be taken over in an incomplete condition unless the contract is canceled in terms of the contract.

