

# Assam Public Procurement Act, 2017

ASSAM

India

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### Act 24 of 2017

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Assam Public Procurement Act, 2017(Assam Act No. 24 of 2017)Last Updated 12th February, 2020(Received the assent of the Governor on 6th April, 2017)(Published in the Assam Gazette, Extraordinary, dated 11.4.2017, pp. 1023-62)An Act to establish legal foundations for procedures for procurement by public entities so as to ensure - timely delivery of intended outcome with efficiency; economy; integrity and accountability; transparency, fair and equitable treatment of bidders; public confidence regarding good governance in the process and for matters connected therewith or incidental thereto.PreambleWhereas, it is expedient to establish legal foundations for procedures for procurement by public entities so as to ensure, -(i) timely delivery of its intended outcomes with efficiency, economy, professionalism and public accountability from its officers and staff;(ii) the highest standards of transparency, fairness, equality towards its bidders;(iii) support to policies of the State on social, economic and environmental issues; and(iv) assurance to public and other stakeholders regarding probity and integrity of the process.It is hereby enacted in the Sixty-eighth Year of the Republic of India, as follows :

## Chapter I

### Preliminary

#### 1. Short title, extent and commencement.

(1)This Act may be called the Assam Public Procurement Act, 2017.(2)It shall extend to the whole of the State of Assam.(3)It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint :Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

## 2. Definitions.

- In this Act, unless the context otherwise requires, -(a)"bid" means a formal offer made in pursuance of an invitation by a procuring entity and includes any tender, proposal (technical or financial) or quotation;(b)"bidder" means any person, company, firm, agency, institution, etc., participating in a procurement process of a procuring entity for procurement of goods, works or services;(c)"bidder registration documents" means the documents issued by a procuring entity, including any amendments thereto, that set out the terms and conditions of registration proceedings and includes the invitation to register;(d)"bidding documents" means documents for procurement of goods, works or services issued by the procuring entity, including any amendments thereto, that set out the terms and conditions of the given procurement and includes the invitation to bid; The term "bidding document" also includes the "request for proposal" and "request for quotation" documents used for hiring consultancy and non-consultancy services;(e)"bid security" means a security provided to the procuring entity by a bidder for securing the fulfillment of any obligation in terms of the provisions of the bidding documents;(f)"competent authority" means a person, body of persons, organs or an agency competent to take actions as may be referred to or directed to it by the Authority under this Act or the Rules or Guidelines made hereunder or by the provisions of any other law for the time being in force;(g)"e-procurement" means the electronic process where in the physical tendering activity is carried out online using the Internet and associated technologies;(h)"electronic reverse auction" means an online real-time purchasing technique utilized by the procuring entity to select the successful submission, which involves presentation by bidders of successively lowered bids during a scheduled period of time and the automatic evaluation of bids;(i)"Framework agreement procedure" means a procedure conducted in two stages: a first stage to select a supplier (or suppliers) or a contractor (or contractors) to be a party (or parties) to a framework agreement with a procuring entity, and a second stage to award a procurement contract under the framework agreement to a supplier or contractor party;(j)"Framework agreement" means an agreement between the procuring entity and the selected supplier (or suppliers) or contractor (or contractors) concluded upon completion of the first stage of the framework agreement procedure;(k)"Closed framework agreement" means a framework agreement to which no supplier or contractor or State Agency acting as Consortium on behalf of PPP registered MSE to the framework agreement that is not initially a party to the framework agreement may subsequently become a party;(l)"Open framework agreement" means a framework agreement to which a supplier (or suppliers) or a contractor (or contractors) in addition to the initial parties may subsequently become a party or parties;(m)"Framework agreement procedure with second-stage competition" means a procedure under an open framework agreement or a closed framework agreement with more than one supplier or contractor in which certain terms and conditions of the procurement that cannot be established with sufficient precision when the framework agreement is concluded are to be established or refined through a second-stage competition;(n)"Framework agreement procedure without second-stage competition" means a procedure under a closed framework agreement in which all terms and conditions of the procurement are established when the framework agreement is concluded;(o)"goods" includes all articles, material, commodities, electricity, livestock, furniture, fixtures, raw material, spares, instruments, software, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock and any other category of goods, whether in solid, liquid or gaseous form, purchased or otherwise acquired for the use of a procuring entity as well as

services or works incidental to the supply of the goods if the value of services or works or both does not exceed that of the goods themselves;(p)"invitation to bid" means a document published by the procuring entity inviting bids relating to the subject-matter of procurement and any amendment thereto and includes notice inviting tender and request for proposal;(q)"notification" means a notification published in the Official Gazette;(r)"prescribed" means prescribed by rules made under this Act;(s)"pre-qualification" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified;(t)"pre-qualification documents" means the documents issued by a procuring entity, including any amendments thereto, that set out the terms and conditions of the pre-qualification proceedings and includes the invitation to pre-qualify;(u)"procurement" or "public procurement" means the acquisition by purchase, lease, licence or otherwise of works, goods or services, including award of Public Private Partnership projects, by a procuring entity whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition without consideration, and "procure" or "procured" shall be construed accordingly;(v)"procurement contract" means a contract entered into between the procuring entity and a successful bidder concerning the subject-matter of procurement;(w)"procurement process" means the process of procurement extending from the issue of invitation to pre-qualify or to register or to bid till the award of the procurement contract or cancellation of the procurement process, as the case may be;(x)"procuring entity" means an entity referred to in sub-section (2) of section 3;(y)"Public Private Partnership" means an arrangement between the State Government, statutory entity or any other government owned entity on one side and a private sector entity on the other, for the provision of public assets or public services or both, through investments being made or management being undertaken, or both investments being made and management being undertaken, by the private sector entity, for a specified period of time, where there is well defined allocation of risk between the private sector and the State Government, statutory entity or any other government owned entity, as the case may be, and the private entity receives performance linked payments that conform (or are bench-marked) to specified and pre-determined performance standards, measurable by the State Government, statutory entity or any other government owned entity, as the case may be, or its representative;(z)"rate contract" means an agreement between a procuring entity and one or more bidders which specifies the terms and conditions including the price, for the supply of a subject-matter of procurement required on a recurring basis;(za)"registered bidder" means any bidder who is on a list of registered bidders of the procuring entity maintained under section 19;(zb)"services" means any subject-matter of procurement other than goods or works and includes physical, maintenance, professional, intellectual, consultancy and advisory services or any service classified or declared as such by a procuring entity and does not include appointment of any person made by any procuring entity;(zc)"subject-matter of procurement" means any item of procurement whether in the form of goods, services or works;(zd)"works" means all works associated with the construction, reconstruction, site preparation, demolition, repair, maintenance, or renovation or railways roads, highways or a building, an infrastructure, or structure or an installation or any construction work relating to excavation, drilling, installation of equipment and materials, as well as services or goods incidental or consequential to the works if the value of those services or goods does not exceed that of the works themselves;(ze)"State Government" means the Government of Assam;(zf)"Swiss Challenge" means a method of procurement in which an unsolicited proposal for a government project is received and third party are allowed to challenge the original proposal through open

bidding, and then the original proponent is given a chance to counter-match the most advantageous/most competitive offer.

### 3. Application.

(1) This Act shall apply to all procuring entities referred to in subsection (2). (2) For the purposes of this Act, "procuring entity" means, - (a) any department of the State Government or its attached or subordinate office; (b) any State Public Sector Enterprise owned or controlled by the State Government; (c) any entity established or constituted by the Constitution of India whose expenditure is met from the Consolidated Fund of the State; (d) any entity or board or corporation or authority or society or trust or autonomous entity (by whatever name called) established or constituted by an Act of the State Legislature or an entity owned or controlled by the State Government; (e) any other entity which the State Government may, by notification, specify to be a procuring entity for the purpose of this Act, being an entity that receives substantial financial assistance from the State Government in so far as the utilization of such assistance towards procurement is concerned. (f) any procurement support agency or procurement agent or procurement consultant involved in procurement on behalf of the procuring entities specified in clauses (a) to (e) above. (3) The State Government may, by notification, permit the procuring entities to carry out procurement, financed under the assistance from the multilateral development banks, bilateral development agencies, or foreign governments or pursuant to an inter-governmental agreement, in accordance with the procurement procedures stipulated in terms of such assistance or agreement : Provided that before granting permission, the State Government shall satisfy itself that the procurement procedures stipulated in terms of such assistance or agreement, are in consonance with the basic norms of public procurement specified in sub-section (1) of section 4. (4) Subject to such rules as may be made in this behalf consistent with the provisions of sections 4 and 11, the provisions of Chapters II and III shall not apply to, - (a) any procurement the estimated cost or value of which is less than the threshold value as Finance Department of the State Government may, by notification, specify for different classes or categories of procurements or procuring entities; (b) emergency procurement necessary for the management of any disaster, as defined in clause (d) of section 2 of the Disaster Management Act, 2005 (Central Act No. 53 of 2005); (c) the procurement under Assembly and Parliamentary election urgency; (d) procurement for the purposes of security or on strategic considerations that the State Government may, by general or special order, specify; (e) procurement by a procuring entity under clause (b) to clause (e) of subsection (2) of section 3 from its subsidiary company or joint venture company in which such procuring entity has more than fifty percent share; (f) any other procurement, as may be notified by Finance Department.

## Chapter II

### Procurement

#### A. General Principles

## **4. Fundamental principles of public procurement.**

(1) In relation to a public procurement, the procuring entity shall have the responsibility and accountability to ensure, - (a) effective and timely achievement of the planned outcomes of the procurement without excessive cost over-run; (b) transparency (including consistency, objectivity, predictability openness), fairness (including appeal rights), equality (including nondiscrimination) in relations with the bidders; (c) professionalism, economy and efficiency, from official involved in process; (d) compliance with the code of integrity in public procurement as laid down by the State Government under section 11 of this Act by officer or employee of a procuring entity or a person participating in a procurement process. (2) Subject to the provision of sub-section (3) of section 3, every procuring entity shall carry out its procurement in accordance with the provisions of this Act and the rules and guidelines made thereunder.

## **5. Determination of need for procurement and description thereof.**

(1) All procurement under this Act shall be initiated after first determining the need for the subject-matter of procurement and after fulfilling the obligations under section 8 below, duly taking into account the matters so prescribed in this regard in the rules made under this Act. (2) While assessing the need under sub-section (1), the procuring entity shall take into account the estimated cost of the procurement and also decide on the following matters, namely ; (a) the scope or quantity of procurement, if determined; (b) Ensure that the need is neither artificially created nor exaggerated, with the intention to channel benefits to certain individual(s) or organization(s); (c) ensure transparency and not restrict dialogue for determining solutions for the need only with certain individual(s) or organization(s) giving them undue advantage by way of access to inside information not disclosed or disclosed late to others; (d) limitation on participation of bidders in terms of section 6, if any applicable, and justification thereof; and (e) any other matter as may be prescribed. (3) The procuring entity shall maintain documents relating to the determination of the need for procurement under sub-section (1) and the assessment made under sub-section (T). (4) Procurement Planning : (a) Every procurement entity shall prepare a Procurement Plan along with their proposal for Annual Budgetary Allocations for a Financial Year and the Plan shall be updated as per the approved Annual Budget Allocation for the entity. The updated Procurement Plan shall be approved by the concerned Administrative Department within 15 days of receipt of Budget Communication from the Finance Department of the State Government. (b) The Procurement Plan, including its updates, shall set forth at the minimum the following: (i) a brief description of goods, works, and/or non-consulting services for which procurement action is to take place during the respective financial year; (ii) the proposed methods of procurement pursuant to the provisions in this Act and the Rules made thereunder; (iii) any provision of preference in accordance to section 6 of the Act; (iv) the review thresholds as per the DFP Rules of the State Government; (v) the time schedule for key procurement activities; and (vi) any other information. (c) The Procurement Plan prepared pursuant to sub-clause (4)(a) of this section may be further updated by the procurement entity with approval of the concerned Administrative Department, provided that the updated shall remain within the approved Annual Budgetary Allocation for the procurement entity. (d) The procuring entity shall publish the Procurement Plan prepared pursuant to sub-clause (4) of this section on the State Public Procurement Portal and in

the website of the concerned procuring entity :Provided that the publication of information under this clause shall not be construed as initiation of procurement process and cast any obligation on the procuring entity to issue bidding document or confer any right on prospective bidders.

## **6. Participation of bidders.**

(1)The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or among bidders or against any category thereof, except when authorized or required to do so by this Act or the rules or guidelines made thereunder or by the provisions of any other law for the time being in force.(2)In addition and without prejudice to any existing provisions of enactment of Procurement Preference Policy, Assam, 2015, the State Government may, by notification in this behalf, provide for mandatory procurement of any subject-matter of procurement from any category of bidders, and purchase or price preference in procurement from any category of bidders, on the following grounds, namely :(a)the promotion of domestic industry;(b)socio-economic policy of the Central Government or the State Government;(c)any other consideration in public interest in furtherance of a duly notified policy of the Central Government or the State Government:Provided that any such notification shall contain a reasoned justification for such mandatory or preferential procurement, the category of suppliers chosen and the nature of preference provided.(3)The procuring entity, when inviting the participation of bidders in the procurement process, shall declare whether participation of bidders is limited pursuant to this section and on what ground and any such declaration may not ordinarily be later altered.(4)Nothing in this section shall be construed as preventing the State Government or any procuring entity from imposing or enforcing measures limiting participation on account of the need, -(a)to protect public order, morality or safety;(b)to protect human, animal or plant life or their health;(c)to protect intellectual property;(d)to protect the essential security and strategic interest of India.(5)Eligibility conditions :(a)The procuring entity may, however, lay down reasonable Eligibility Conditions for participation in the procurement process, as distinct from and in addition to any technical or financial qualification criteria, if prescribed, to ensure compliance with the Transparency and Code of Integrity as enunciated in section 4(l)(b) and (d). Rules and guidelines hereunder may lay down eligibility conditions that may be prescribed by procuring entities.(b)Any bidder participating in the procurement process shall, -(i)have fulfilled his obligation to pay such of the taxes payable to the Central Government or the State Government or any local authority as may be specified in the bidding documents, pre-qualification documents or bidder registration documents;(ii)not be insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be the subject of legal proceedings for any of the foregoing reasons;(iii)not have, and their directors and officers not have, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of three years preceding the commencement of the procurement process, or not have been otherwise disqualified pursuant to debarment proceedings;(iv)not have a conflict of interest as may be prescribed and specified in the pre-qualification documents, bidder registration documents or bidding documents, which materially affects fair competition;(v)fulfill any other Eligibility Condition as may be prescribed, in terms of sub-section (5) (a) above.

## 7. Qualifications of bidders.

(1) A procuring entity may determine and apply one or more of the requirements specified in sub-section (2) for a bidder to be qualified for participating in a procurement process, as distinct from and in addition to any eligibility conditions, if prescribed. (2) Any bidder participating in the procurement process shall, - (a) possess the necessary professional, technical, quality assurance, financial and managerial resources, certification and experience and competencies required, if any, by the bidding documents, pre-qualification documents or bidder registration documents, as the case may be, issued by the procuring entity; (b) fulfill any other qualifications as may be prescribed. (3) Subject to the right of bidders to protect their intellectual property or trade secrets the procuring entity may require a bidder to provide any such information or declaration as it considers necessary to make an evaluation in accordance with sub-section (5) of section 6 and sub-section (1) above. (4) Any requirement established pursuant to section 6 and section 7 shall be set out in the pre-qualification documents or bidder registration documents, if any, and in the bidding documents and shall apply equally to all bidders. (5) The procuring entity shall evaluate the eligibility and qualifications of bidders only in accordance with the requirement specified in this sections 6 and 7.

## 8. Obligations related to value of procurement.

(1) Initiating procurement after due approvals, - (a) every procuring entity shall initiate the procurement process only after technical, administrative and budgetary approvals are accorded and after obtaining the approval of the authority which has the necessary financial powers to initiate such value and category of procurement as per the rules and guidelines made under this Act. (b) however, procuring entity to save time, may initiate advance actions of procurement in anticipation of administrative and budgetary approvals, under certain circumstances and following procedures prescribed with the approval of an authority designated in this regard in the rules made under this Act, provided that the procurement process shall stop short of any financial or contractual commitment, even in such cases unless administrative and budgetary approvals have been obtained, (c) the Government shall lay down the circumstances, procedures and designated authority for initiating such advance procurement under clause (b) above. (2) Each procuring entity shall maintain a register of works and order of supplies of goods and services, liabilities incurred against these works and orders of supplies, liabilities cleared and liabilities awaiting clearance, in a format as may be prescribed : Provided that the Government may make rules not to sanction new work if the outstanding liabilities in a Department exceed a limit as may be prescribed. (3) A procuring entity shall neither divide or bulk its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid its obligations under sub-section (1) or to limit competition among bidders or otherwise avoid its obligations under this Act : Provided that in the interest of efficiency, economy and timely completion or supply, a procuring entity may, for reasons to be recorded in writing, divide or bulk its procurement into appropriate packages prior to invitation of bid.

## **9. Time frame for processing.**

(1) Subject to the rules as may be made by the State Government in this behalf, every procuring entity shall pre-determine a reasonable time frame for completion of various stages of the process of procurement and indicate the same in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be. (2) The procuring entity shall endeavour to adhere to the time frame indicated under sub-section (1) and in case of failure to do so extend such time frame for reasons to be recorded in writing.

## **10. Documentary record of procurement proceedings and of communications.**

(1) The procuring entity shall maintain a record of its procurement proceedings, which shall include the following, namely : (a) bid documents of Bidders and certified copy of contract agreement with the successful bidders; (b) description of the subject-matter of the procurement under section 12; (c) statement of the reason for choice of a procurement method other than open competitive bidding under sub-section (4) of section 29; (d) particulars of the participating bidders; (e) written requests for clarifications and any responses thereto including during pre-bid conferences; (f) bid prices and other financial terms; (g) summary of the evaluation of bids; (h) details of any appeal under section 38, and the related decisions; (i) any other information or record as may be prescribed. (2) Any document, notification, decision or other information generated in the course of a procurement, including in connection with appeals under section 38 or in the course of a meeting, or forming part of the record of the procurement process, shall be in a form that provides a record of the content of the information and is accessible so as to be usable for subsequent reference. (3) Subject to the provisions of the Right to Information Act, 2005 (Central Act No. 22 of 2005) or of any other law for the time being in force relating to retention of records, the procuring entity shall retain the documentary record indicated in sub-sections (1) and (2), for a reasonable period after the expiry of the procurement process or procurement contract, as the case may be, so as to enable audit or such other review.

## **11. Code of integrity for procuring entity and bidders.**

(1) No officer or employee of a procuring entity or a person participating in a procurement process shall act in contravention of the code of integrity prescribed by the State Government. (2) The code of integrity referred to sub-section (1) shall include provisions for, - (a) prohibiting, - (i) any offer, solicitation or acceptance of any bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process; (ii) any omission, including a misrepresentation that misleads or attempts to mislead so as to obtain a financial or other benefit or avoid an obligation; (iii) any collusion, bid rigging or anti-competitive behaviour to impair the transparency, fairness and progress of the procurement process; (iv) improper use of information shared between the procuring entity and the bidders with an intent to gain unfair advantage in the procurement process or for personal gain; (v) any financial or business transactions between the bidder and any officer or employee of the



procuring entity, who are directly or indirectly related to tender or execution process of contract;(vi)any coercion including impairing or harming or threatening to do the same, directly or indirectly, to any party or to its property to influence the procurement process;(vii)any obstruction of any investigation or audit of a procurement process;(viii)making false declaration or providing false information for participation in, -(a)tender process or to secure a contract;(b)disclosure of conflict of interest;(c)disclosure by the bidder of any previous transgressions with any entity in India or any other country during the last three years or of any debarment by any other procuring entity.(3)Without prejudice to the provisions of Chapter IV, in case of any breach of the code of integrity by a bidder or prospective bidder, as the case may be, the procuring entity after giving a reasonable opportunity of being heard, may take appropriate measures including, -(a)exclusion of the bidder from the procurement process;(b)calling off of pre-contract negotiations and forfeiture or encashment of bid security;(c)forfeiture or encashment of any other security or bond relating to the procurement;(d)recovery of payments made by the procuring entity along with interest thereon at bank rate;(e)cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;(f)debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding three years under section 46.

## **12. Description of the subject matter of procurement.**

(1)The description of the subject-matter of procurement shall be set out in the pre-qualification documents, bidder registration documents and the bidding documents and shall, -(a)be such as to meet the essential needs of the procuring entity;(b)to the extent practicable -(i)be objective, functional, generic and measurable;(ii)set out the relevant technical, quality and performance characteristics;(iii)not indicate a requirement for a particular trade mark, trade name or brand and in case it is essential to mention, the word or equivalent" shall be invariably used after the trade mark, trade name or brand;(c)be drawn up in accordance with guidelines as may be prescribed.(2)Where applicable, the technical specifications shall, to the extent practicable, be based on national technical regulations or recognised national standards or building codes, wherever such standards exist or in their absence, relevant International Standards may be used.

## **13. Single envelop and two envelop bids.**

(1)State Government may lay down in rules and guidelines hereunder, conditions and detailed procedures under which, a procuring entity may choose to, -(a)call for bids in which the technical, quality and performance aspects, commercial terms and conditions and the financial aspects including the price are contained in a single envelope; or(b)if it is of the opinion that it is essential to evaluate the technical aspects of a bid before considering its financial aspect, call for bids in two envelopes, namely:(i)the techno-commercial bid containing the technical, quality and performance aspects, commercial terms and conditions and all other details and documents sought in the tender, except the price and relevant financial details; and(ii)the financial bid containing financial aspects including the price.(2)In case the procuring entity calls for bids in terms of clause (b) of sub-section (1), the techno-commercial bid shall be opened and evaluated first and the financial bid of only those bids which have been found technically acceptable shall be opened and evaluated.

## **14. Criteria for evaluation.**

(1) Save as otherwise provided in this Act or the rules or guidelines made thereunder or in any other law for the time being in force, the evaluation criteria shall relate to the subject-matter of procurement and may include, - (a) the price; (b) the cost of operating, maintaining and repairing goods or works, the time for delivery of goods, completion of works or provision of services, the characteristics of the subject-matter of procurement, such as the functional characteristics of goods or works and the environmental characteristics of the subject-matter, the terms of payment and of guarantees in respect of the subject-matter of procurement; and (c) where relevant, the experience, reliability and professional and technical competence of the bidder and of the personnel to be involved in providing the subject-matter of procurement. (2) Where considered necessary, the procuring entity may also specify trials, sample testing and other additional methods of technical evaluation of a bid: Provided that the requirement of such trials, sample testing or additional methods of evaluation shall be indicated in the bidding documents and a record of such trials and testing shall be maintained in such manner as may be prescribed. (3) To the extent practicable, all non-price evaluation criteria shall be objective and quantifiable. (4) The criteria for evaluation of bids, including whether the requirements laid down in sub-section (2) of section 6 are applicable, shall be contained in the bidding documents. (5) Where applicable, the relative weights to be attached to each criterion shall be specified in the bidding documents. (6) No criteria or procedure, other than those mentioned in the bidding documents shall be used by the procuring entity in evaluating bids.

## **15. Price negotiations.**

- Save as otherwise provided in section 31 or section 35 or in such circumstances and subject to such conditions as may be prescribed, no price negotiation shall be held by a procuring entity with a bidder with respect to a bid presented by him.

## **16. Terms and conditions of contracts.**

(1) The terms and conditions of the procurement contracts entered into shall be in accordance with the provisions of this Act, the applicable rules and the conditions indicated in the bidding documents. (2) The State Government may prescribe standard terms and conditions of contract which shall be incorporated in the procurement contracts entered into by procuring entities as applicable.

## **17. State Public Procurement Portal.**

(1) The State Government shall set up and maintain a State Public Procurement Portal accessible to the public for posting matters relating to public procurement. (2) Each procuring entity shall cause the procurement related information to be published as required under this Act or the rules and guidelines made thereunder on the Portal referred to in sub-section (1). (3) Without prejudice to the generality of sub-section (2), the State Public Procurement Portal shall provide access to the

following information, for such period of time as may be prescribed, in relation to procurement governed by the provisions of this Act, namely : (a) pre-qualification documents, bidder registration documents, bidding documents and any amendments, clarifications including those pursuant to pre-bid conference, and corrigenda thereto; (b) list of bidders that presented bids including during pre-qualification or bidder registration, as the case may be; (c) list of pre-qualified and registered bidders, as the case may be; (d) list of bidders excluded under section 25, with reasons; (e) decisions under sections 38 and 39; (f) details of successful bids, their prices and bidders; (g) particulars of bidders who have been debarred by the State Government or a procuring entity together with the name of the procuring entity, cause for the debarment action and the period of debarment; (h) any other information as may be prescribed.

## **18. Pre-qualification of bidders.**

(1) In appropriate technically complex; strategic and high value procurements as prescribed in rules and guidelines made hereunder a procuring entity may engage in a pre-qualification process, with a view to identifying, prior to inviting bids, the bidders that are qualified for any specified period of time. (2) For the purpose of sub-section (1), a procuring entity may invite offers from prospective bidders by giving wide publicity to the invitation to pre-qualify and shall publish the particulars of the bidders that are qualified on the State Public Procurement Portal. (3) Where a procuring entity has undertaken a pre-qualification process in respect of any procurement, only such pre-qualified bidders shall be entitled to continue in the procurement proceedings. (4) The procuring entity shall decide who is pre-qualified in accordance with section 7 and the criteria set out in the pre-qualification documents. (5) Every pre-qualification process shall be carried out in such manner and in accordance with such procedure as may be prescribed.

## **19. Registration of bidders.**

(1) With a view to establishing reliable sources for a subject-matter of procurement or a class of procurement, which may be commonly required across procuring entities or repeatedly required by a procuring entity, a procuring entity may maintain a panel of registered bidders. (2) For the purpose of sub-section (1), a procuring entity may invite offers from prospective bidders by giving wide publicity to the invitation to register and such registration shall be done in accordance with section 7, this section and the criteria set out in the bidder registration documents. (3) The procuring entities shall update the list of registered bidders by allowing potential bidders to apply for registration on a continuous basis. (4) The State Government may prescribe the procedure and conditions for registration of bidders and the period for which such registration shall be valid. Such rules and guidelines may also cover the conditions and procedure for removal of registered bidders from such a list of registered bidders. (5) Where a procuring entity does not register bidders in respect of a subject-matter of procurement, it may use the list of registered bidders of any other procuring entity, if any. (6) The results of the registration process shall be intimated to the bidders and the list of registered bidders for the subject-matter of procurement shall be published in the State Public Procurement Portal.

## **20. Contents of bidding documents.**

(1) Subject to the rules as may be made in this behalf, the invitation to bid shall contain - (a) a brief description of subject-matter of procurement; (b) in case of procurement of, - (i) goods, its specifications including the nature, quantity, time and place of delivery; (ii) works, the nature, completion time and location of the works; (iii) services, the nature of the services, the time and location for providing service; (c) any notice of limitation to participation of bidders in terms of section 6; (d) the manner, date and time for submission of bids; (e) any other information which is considered by the procuring entity relevant for the purpose. (2) The detailed bidding document shall contain the particulars included in the invitation to bid, the criteria for evaluation of bids, the terms of the procurement contract, and such further information as may be prescribed, which may be necessary for the bidders to submit their bids. (3) The State Government may prescribe standard conditions to be included in bidding documents including its form. (4) The State Government may prescribe model bidding documents for different classes of procurements.

## **21. Time frame for submission of bids.**

(1) While fixing the last date by which bids are to be submitted by the bidders, the procuring entity shall take into account - (a) the need of the bidders for having a reasonable time to prepare and submit their bids; and (b) the time frame envisaged for procurement. (2) Subject to the provisions of section 23, the maximum time as may be allowed for submission of bids shall be the same for all bidders.

## **22. Pre-bid clarifications.**

(1) Any bidder may, in writing, seek clarifications from the procuring entity in respect of the bidding documents. (2) The period within which the bidders may seek clarifications under subsection (1) and the period within which the procuring entity shall respond to such requests for clarifications shall be specified in the bidding documents. (3) All requests for clarifications and responses thereto shall be intimated to all bidders and where applicable, shall be published on the State Public Procurement Portal. (4) A procuring entity may hold a pre-bid conference to clarify doubts of potential bidders in respect of a particular procurement and the records of such conference shall be intimated to all bidders and where applicable, shall be published on the State Public Procurement Portal.

## **23. Changes to bidding documents.**

(1) In case any modification is made to the bidding documents or any clarification is issued which materially affects the terms contained in the bidding documents, the procuring entity shall publish such modification or clarification in the same manner as the publication of the initial bidding documents. (2) In case a clarification or modification is issued to the bidding documents, the procuring entity may, prior to the last date for submission of bids, extend such time limit in order to allow the bidders sufficient time to take into account the clarification or modification, as the case may be, while submitting their bids. (3) Any bidder who has submitted his bid in response to the

original invitation shall have the opportunity to modify or re-submit it, as the case may be, within the period of time originally allotted or such extended time as may be allowed for submission of bids, when changes are made to the bidding documents by the procuring entity :Provided that the bid last submitted or the bid as modified by the bidder shall be considered for evaluation.

## **24. The procedure relating to submission, opening and evaluation of bids.**

- Subject to the terms and conditions as may be laid down in the bidding documents, submission of bids, opening and evaluation of bids, including constitution of committees for those purposes shall be in accordance with the rules made under this Act as may be prescribed in the guidelines prepared thereunder.

## **25. Exclusion of bids.**

(1)A procuring entity shall exclude a bid if, -(a)the bidder is not qualified in terms of section 7;(b)the bid materially departs from the requirements specified in the bidding documents or it contains false information;(c)the bidder submitting the bid, his agent or any one acting on his behalf, gave or agreed to give, to any officer or employee of the procuring entity or other governmental authority a gratification in any form, or any other thing of value, so as to unduly influence the procurement process;(d)a bidder, in the opinion of the procuring entity, has a conflict of interest materially affecting fair competition.(2)A bid shall be excluded as soon as the cause for its exclusion is discovered.(3)Every decision of a procuring entity to exclude a bid shall be for reasons to be recorded in writing.(4)Every decision of the procuring entity under sub-section (3) shall be, -(a)communicated to the concerned bidder in writing;(b)published on the State Public Procurement Portal.

## **26. Cancellation of the procurement process.**

(1)A procuring entity may, for reasons to be recorded in writing, cancel the process of procurement initiated by it, -(a)at any time prior to the acceptance of the successful bid; or(b)after the successful bid is accepted in accordance with sub-sections (4) and (5).(2)The procuring entity shall not open any bids or proposals after taking a decision to cancel the procurement and shall return such unopened bids or proposals.(3)The decision of the procuring entity to cancel the procurement and reasons for such decision shall be immediately communicated to all bidders that participated in the procurement process.(4)If the bidder whose bid has been accepted as successful fails to sign any written procurement contract as required, or fails to provide any required security for the performance of the contract, the procuring entity may cancel the procurement process after forfeiting the bid security provided by the bidder to the State Government.(5)If a bidder is convicted of any offence under this Act, the procuring entity may, -(a)cancel the relevant procurement process if the bid of the convicted bidder has been declared as successful but no procurement contract has been entered into;(b)rescind the relevant contract or forfeit the payment of all or a part of the contract value if the procurement contract has been entered into between the procuring entity and the convicted bidder.

## 27. Award of contract.

(1) Subject to the provisions of section 25 and sub-section (2) of section 6, the procuring entity shall consider a bid as successful, -(a) where price is the only award criterion, the bid with the lowest bid price; (b) where there are price and other award criteria, the most advantageous bid ascertained on the basis of the criteria and procedures for evaluating bids as specified in the bidding documents; (c) where there are no financial criteria, the most advantageous bid ascertained on the basis of selected non-financial criteria or other parameters for evaluating bids as specified in the bidding documents. (2) A bid shall be treated as successful in terms of sub-section (1), only after the competent authority has approved the procurement in terms of that bid. (3) As soon as the procuring entity, with the approval of the competent authority, decides to accept a bid, it shall communicate that fact to all participating bidders and also publish the decision on the State Public Procurement Portal. (4) While communicating acceptance of the bid, the procuring entity shall advise the successful bidder to complete the requirements within a specified time for furnishing any performance security in the form of Bank Guarantee or any other Bank instrument and signing of tender agreement and if necessary, conclude the procurement contract.

## 28. Methods of procurement.

(1) Subject to the provisions of this Act and the rules made thereunder, a procuring entity may procure a subject-matter of procurement by means of any of the following methods, namely -(a) Open Competitive Bidding; or (b) Limited Bidding; or (c) Two Stage Bidding; or (d) Single Source Procurement; or (e) Electronic Reverse Auction; or (f) Request for Quotations; or (g) Spot Purchase; or (h) Competitive negotiations; or (i) Rate Contract or Government E-Market (GeM) (j) Framework agreement, or (k) E-commerce; or (l) community procurement for community driven schemes; or (m) Swiss Challenge; or (n) any other method of procurement notified by the State Government satisfying the principles of procurement contained in this Act and which the State Government considers necessary in public interest. (2) The State Government may, by notification, declare adoption of electronic procurement as compulsory for different stages and types of procurement, and on such declaration, every requirement for written communication under this Act shall be deemed to have been satisfied if it were done by electronic means. (3) In procuring a subject-matter of procurement, every procuring entity shall follow the detailed procedure in respect of the relevant method of procurement as may be prescribed in the Rules made under this Act.

## 29. Open competitive bidding.

(1) Every procuring entity shall prefer the open competitive bidding as the most preferred method of procurement to be followed. (2) Open competitive bidding may also be followed in case of two stage bidding in terms of section 32, electronic reverse auction in terms of section 33 and rate contract in terms of section 36. (3) The procuring entity may follow the pre-qualification procedure specified in section 18 and invite bids from pre-qualified bidders only. (4) Where the procuring entity chooses a method of procurement other than the open competitive bidding, it shall record the reasons and circumstances thereof. (5) In case of an open competitive bidding, the procuring entity shall invite bids by publishing an invitation to bid on the State Public Procurement Portal and in at least one

such other manner as may be prescribed.

### **30. Limited bidding.**

(1) A procuring entity may choose to procure the subject-matter of procurement by the method of limited bidding, if, - (a) the subject-matter of procurement can be supplied only by a limited number of bidders; or (b) the time and cost involved to examine and evaluate a large number of bids may not be commensurate with the value of the subject-matter of procurement; or (c) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject-matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding; or (d) procurement from a category of prospective bidders is necessary in terms of sub-section (2) of section 6. (2) Subject to the rules as may be made in this behalf, the procedure for limited bidding shall include the following, namely: (a) the procuring entity shall issue an invitation to bid by writing directly, and on the same day, to, - (i) all the bidders who can supply the subject-matter of procurement in terms of clause (a) of sub-section (1); or (ii) all the bidders who are registered for the subject-matter of procurement with the procuring entity or with any other procuring entity, where procuring entity uses the list of registered bidders of such other procuring entity in terms of sub-section (5) of section 19; or (iii) an adequate number of bidders who can supply the subject-matter of procurement selected in a non-discriminatory manner to ensure effective competition, in case of clause (b) of sub-section (1); (b) a procuring entity may allow all prospective bidders who fulfill the qualification criteria laid down for the procurement, whether an invitation to bid has been issued to such a bidder or not, to participate in the bidding process.

### **31. Single source procurement.**

(1) A procuring entity may choose to procure the subject-matter of procurement by the method of single source procurement, if, - (a) the subject-matter of procurement is available only from a particular prospective bidder, or a particular prospective bidder has exclusive rights in respect of the subject-matter of procurement, such that no reasonable alternative or substitute source exists, and the use of any other procurement method would, therefore, not be possible; or (b) owing to a sudden unforeseen event, there is an extremely urgent need for the subject-matter of procurement, and engaging in any other method of procurement would be impractical; or (c) the procuring entity, having procured goods, equipment, technology or services from a supplier, determines that additional supplies or services must be procured from that supplier for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services; or (d) there is an existing contract for the subject-matter of procurement which can be extended for additional goods, works or services and that the procuring entity is satisfied that no advantage would be obtained by further competition, the prices are reasonable and provisions for such extension exist in the original contract; or (e) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of national security interests; or (f) procurement from a particular prospective bidder is necessary in terms of sub-section (2) of section 6; or (g) subject-matter is of artistic nature; or (h) subject-matter of procurement is of such nature as requires the procuring entity to maintain confidentiality, like printing of examination papers; or (i) for procurement particular breed of livestock or seeds or seedlings available only in one

source or when the required quantity is not available with single source but available at different sources; or(j)the item is available as per the rate contract of the Director General of Supplies & Disposal's (DGS&D's).(2)Subject to the rules as may be made in this behalf, the procedure for single source procurement shall include the following, namely :(a)the procuring entity shall solicit a bid from a single prospective bidder;(b)the procuring entity may engage in negotiations in good faith with the bidder;(c)the procuring entity may procure the item as per the rate contract of the Director General of Supplies & Disposal's (DGS&D's), Government of India.(3)The procurement entity shall publish all such procurement in the procurement portal with details as may be prescribed in the Rules made under this Act.

## **32. Two-stage bidding.**

(1)A procuring entity may choose to procure the subject-matter of procurement by the method of two-stage bidding, if, -(a)it is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject-matter of procurement, without receiving inputs regarding its technical aspects from bidders; or(b)the character of the subject-matter of procurement is subject to such rapid technological advances and market fluctuations to make open competitive bidding unfeasible; or(c)the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or(d)the bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement.(2)Subject to the rules as may be made under this Act, in this behalf, the procedure for two-stage bidding shall include the following, namely :(a)in the first stage of the bidding process, the procuring entity shall invite bids containing the technical aspects and contractual terms and conditions of the proposed procurement without a bid price;(b)all first stage bids, which are otherwise eligible, shall be evaluated in accordance with the procedure laid down in the rules through an appropriate committee constituted by the procuring entity;(c)the committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions;(d)in revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or delete any specifications of the subject-matter of procurement or criterion for evaluation;(e)notwithstanding anything contained in sections 29 and 30, in the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement;(f)any bidder, invited to bid but not in a position to supply the subject-matter of procurement due to changes in the specifications, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalized in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.



### 33. Electronic reverse auction.

(1) A procuring entity may choose to procure a subject-matter of procurement by the method of electronic reverse auction, if - (a) it is feasible for the procuring entity to formulate a detailed description of the subject-matter of the procurement; (b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, such that effective competition is ensured; and (c) the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms. (2) Subject to the rules as may be made in this behalf, the procedure for electronic reverse auction shall include the following, namely - (a) the procuring entity shall invite bids to the electronic reverse auction by causing an invitation to be published in accordance with sub-section (5) of section 29 or issued in accordance with sub-section (2) of section 30, as the case may be; (b) the invitation shall, in addition to the information as set out in section 20, include details relating to - (i) access to and registration for the auction; (ii) opening and closing of auction; (iii) norms for conduct of the auction; (iv) any other information as may be relevant to the method of procurement. (3) Electronic reverse auction may also be used for obtaining the best financial bid in two stage bidding under section 32 and where the two-part bid system is followed in terms of section 13.

### 34. Request for quotations and spot purchase.

(1) A procuring entity may choose to procure a subject-matter of procurement of value below a monetary value as may be prescribed, in the rules made under this Act and notified by the State Government by the method of request for quotations in the following situations, namely : (a) procurement of readily available commercial-off-the-shelf goods that are not specially produced to the particular description of the procuring entity and for which there is an established market; or (b) physical services that are not specially provided to the particular description of the procuring entity and are readily available in the market; or (c) procurement of any goods or works or services which are urgently required for maintenance or emergency repairs. (2) Subject to the rules as may be made in this behalf, the procedure for request for quotations shall include the following, namely : (a) quotations in sealed envelopes shall be requested simultaneously from as many potential bidders as practicable, subject to a minimum of three, for submission within a given date and time: Provided the potential bidders shall be genuine, having clear individual established identity and not a sister concern of one another. (b) each bidder shall be permitted to give only one quotation; (c) the successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the request for quotations. (3) A procuring entity may do a spot purchase of the subject-matter of procurement specified in sub-section (1) through a purchase committee comprising three members within the procuring entity and in such cases the purchase committee shall record a certificate to the effect that it is satisfied that the goods or services are of requisite quality and are priced at the prevailing market rate or commensurate to the market price. (4) Nothing contained in sections 5 to 10 (both inclusive), sections 12 to 27 (both inclusive) and Chapter III shall apply to purchases made under this section.

### **35A. Competitive negotiations.**

(1)A procuring entity may choose to procure a subject-matter of procurement by the method of competitive negotiations, if, -(a)owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject-matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding or any other method; or(b)the subject-matter of procurement involves livestock, cotton, oilseeds or such other agricultural produces whose prices fluctuate frequently and in the opinion of the procuring entity the subject-matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding or any other method.(2)Subject to the rules as may be made in this behalf, the procedure for competitive negotiation shall include the following, namely :(a)purchase of the subject-matter of procurement under this section shall be made through a purchase committee within the procuring entity and in such cases the purchase committee shall record a certificate to the effect that it is satisfied that the subject-matter of procurement is of requisite quality and are priced at the prevailing market rate;(b)to ensure effective competition, an adequate number, not being less than three, of potential bidders selected in a non-discriminatory manner shall be included in procurement process;(c)an equal opportunity shall be given to all bidders to participate in the negotiations.(3)Nothing contained in sections 5 to 10 (both inclusive), sections 12 to 27 (both inclusive) and Chapter III shall apply to purchases made under this section.

### **35B. Swiss challenge.**

(1)A procuring entity may choose to procure the subject-matter of procurement by the method of Swiss Challenge, under such conditions, as may be prescribed by the Government.(2)The procedure for Swiss Challenge shall be such as may be prescribed by the Government.

### **36. Rate contract and Government E-Market (GeM).**

(1)Rate contract :(a)A procuring entity may choose to engage in a rate contract procedure in accordance with the rules as may be made in this behalf, under this Act where it determines that, -(i)the need for the subject-matter of procurement is expected to arise on an indefinite or repeated basis during a given period of time;(ii)by virtue of the nature of the subject-matter of procurement, the need for it may arise during a given period of time.(b)A procuring entity may award a rate contract on the basis of open competitive bidding or by means of other procurement methods in accordance with the provisions of this Act.(c)Subject to the rules as may be made in this behalf, the procedure for rate contract shall include the following, namely:(i)the manner in which rate contract is to be entered into, including selection of the method of bidding to be followed; and(ii)the manner in which a procurement contract has to be entered into using rate contract procedure.(2)Government E-Market (GeM) :(a)Director General Supplies and Disposal (DGS&D) hosts an online Government e-Market Place (GeM) on pilot basis, for common use goods and services. The electronic and online procurement process on GeM is end-to-end from placement of supply order to payment to suppliers.(b)Government Procuring Entities (including State Government entities) at their option may view, compare and directly purchase online, the Products and services offered by various suppliers on GeM under such conditions, as may be prescribed by

the Government.(c)The procedure and details of procurement through the GeM shall be such as may be prescribed by the Government.

### **37. Additional conditions for use of methods of procurement.**

- Notwithstanding anything contained in sections 30 to 36 (both inclusive), the State Government may through notification, add the conditions for the use of any of the methods of procurement mentioned in clauses (b) to (i) of sub-section (1) of section 28, in a manner that is consistent with the principles of transparency and accountability.

## **Chapter III**

### **Appeals**

### **38. Appeals.**

(1)Subject to section 40, if any bidder or prospective bidder is aggrieved that any decision, action or omission of the procuring entity is in contravention to the provisions of this Act or the rules or guidelines issued thereunder, he may file an appeal to such officer of the procuring entity, as may be designated by it for the purpose, within a period of ten days or such other period as may be specified in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, from the date of such decision or action, omission, as the case may be, clearly giving the specific ground or grounds on which he feels aggrieved :Provided that after the declaration of a bidder as successful in terms of section 27, the appeal may be filed only by a bidder who has participated in procurement proceedings :Provided further, that in case a procuring entity evaluates the technical bid before the opening of the financial bid, an appeal related to the matter of financial bid may be filed only by a bidder whose technical bid is found to be acceptable.(2)On receipt of an appeal under sub-section (1), the officer designated under that sub-section shall, after affording a reasonable opportunity of being heard to the parties, determine as to whether or not the procuring entity has complied with the provisions of this Act, the rules and guidelines made thereunder and the terms of the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, and pass an order accordingly which shall, subject to the order passed under sub-section (5), be final and binding on the parties to the appeal.(3)The officer to whom an appeal is filed under sub-section (1) shall deal with the appeal as expeditiously as possible and shall endeavour to dispose it of within thirty days from the date of filing of the appeal.(4)If the officer designated under sub-section (1) fails to dispose of the appeal filed under that sub-section within the period specified in subsection (3), or if the bidder or prospective bidder or the procuring entity is aggrieved by the order passed under sub-section (2), the bidder or prospective bidder or the procuring entity, as the case may be, may file a second appeal to an officer or authority designated by the State Government in this behalf within fifteen days from the expiry of the period specified in sub-section (3) or of the date of receipt of the order passed under sub-section (2), as the case may be.(5)On receipt of an appeal under sub-section (4), the officer or authority designated under that sub-section shall, after affording a reasonable opportunity of being heard to the parties, determine as to whether or not the procuring entity has complied with the provisions of this Act, the rules and

guidelines made thereunder and the terms of the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, and pass an order accordingly which shall be final and binding on the parties to the appeal.(6)The officer or authority to which an appeal is filed under sub-section (4) shall deal with the appeal as expeditiously as possible and shall endeavour to dispose it of within thirty days from the date of filing of the appeal :Provided that if the officer or authority to which an appeal is filed under sub-section (4) is unable to dispose of the appeal within the aforesaid period, he shall record reason for the same.(7)The officer or authority to which an appeal may be filed under subsection (1) or (4) shall be indicated in the pre-qualification documents, bidder registration documents' or bidding documents, as the case may be.(8)Every appeal under sub-sections (1) and (4) shall be filed in such form and manner and shall be accompanied by such fee as may be prescribed.(9)While hearing an appeal under this section, the officer or authority concerned shall follow such rules of procedure as may be prescribed.(10)No information which would impair the protection of essential security interests of India, or impede the enforcement of law or fair competition, or prejudice the legitimate commercial interests of the bidder or the procuring entity, shall be disclosed in a proceeding under this section.

### **39. Stay of procurement proceedings.**

- While hearing of an appeal under section 38, the officer or authority hearing the appeal may, on an application made in this behalf and after affording a reasonable opportunity of hearing to the parties concerned, stay the procurement proceedings pending disposal of the appeal, if he, or it, is satisfied that failure to do so is likely to lead to miscarriage of justice.

### **40. Appeal not to lie in certain cases.**

- No appeal under section 38 shall lie against any decision of the procuring entity relating to the following matters, namely : (a) determination of need of procurement in terms of section 5; (b) provisions limiting participation of bidders in the bid process in terms of the provisions of section 6; (c) the decision of whether or not to enter into negotiations in terms of section 15; (d) cancellation of a procurement process in terms of section 26; (e) applicability of the provisions of confidentiality under section 49.

## **Chapter IV**

### **Offences and Penalties**

#### **41. Punishment for taking gratification or valuable thing in respect of public procurement.**

- Whoever, being an officer or employee of the procuring entity acting in connection with any procurement process, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification other than legal remuneration or any valuable thing without consideration or for a consideration which he knows to be inadequate, in connection

with such public procurement, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

## **42. Interference with procurement process.**

(1)Whoever, -(a)interferes with or influences any procurement process with the intention of securing any wrongful gain or undue advantage for any prospective bidder or bidder; or(b)interferes with the procurement process with the intention of causing any unfair disadvantage for any prospective bidder or bidder; or(c)engages in any action or lobbying, directly or indirectly, with the objective of unduly restricting fair competition; or(d)intentionally influences any procuring entity or any officer or employee thereof or willfully or fraudulently makes any assertion or representation that would restrict or constrain fair competition in any procurement process; or(e)engages a former officer or employee of a procuring entity as an employee, director, consultant, adviser or otherwise, within a period of one year after such former officer or employee was associated with a procurement in which the employer had an interest; or(f)engages in any form of bid-rigging, collusive bidding or anti-competitive behaviour in the procurement process; or(g)intentionally breaches confidentiality referred to in section 49 for any undue gain, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty lakh rupees or ten per cent of the assessed value of procurement, whichever is less.(2)A bidder who, -(a)withdraws from the procurement process after opening of financial bids; or(b)withdraws from the procurement process after being declared the successful bidder; or(c)fails to enter into procurement contract after being declared the successful bidder; or(d)fails to provide performance security or any other document or security required in terms of the bidding documents after being declared the successful bidder, without valid grounds, shall, in addition to the recourse available in the bidding documents or the contract, be punished with fine which may extend to fifty lakh rupees or ten per cent of the assessed value of procurement whichever is less.

## **43. Vexatious appeals or complaints.**

- Whoever intentionally files any vexatious, frivolous or malicious appeal or complaint under this Act, with the intention of delaying or defeating any procurement or causing loss to any procuring entity or any other bidder, shall be punished with fine which may extend to twenty lakh rupees or five per cent of the value of procurement, whichever is less.

## **44. Offences by companies.**

(1)Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in-charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly :Provided that nothing contained in this sub-section shall render any such person liable for any

punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.(2)Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.Explanation - For the purpose of this section, -(i)"company" means a body corporate and includes a limited liability partnership, firm, registered society or co-operative society, trust or other association of individuals; and(ii)"director" in relation to a limited liability partnership or firm, means a partner in the firm.

#### **45. Abetment of certain offences.**

- Whoever abets an offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punished with the punishment provided for the offence.

#### **46. Debarment from bidding.**

(1)A bidder shall be debarred by the State Government if he has been convicted of an offence -(a)under the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1988); or(b)under the Indian Penal Code, 1860 (Central Act No. 45 of 1860) or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.(2)A bidder debarred under sub-section (1) shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date on which he was debarred.(3)If a procuring entity finds that a bidder has breached the code of integrity prescribed in terms of section 11, it may debar the bidder for a period not exceeding three years.(4)Where the entire bid security or the entire performance security or any substitute thereof, as the case may be, of a bidder has been forfeited by a procuring entity in respect of any procurement process or procurement contract, the bidder may be debarred from participating in any procurement process undertaken by the procuring entity for a period not exceeding three years.(5)The State Government or a procuring entity, as the case may be, shall not debar a bidder under this section unless such bidder has been given a reasonable opportunity of being heard.

#### **47. Previous sanction necessary for prosecution.**

- No court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant during the course of his employment, except, with the previous sanction, -(a)in case of a person who is employed in connection with the affairs of the State and is not removable from his office save by or with the sanction of the State Government, of that Government.(b)in the case of any other person, of the authority competent to remove him from his office.

## **Chapter V**

### **Miscellaneous**

#### **48. Requirement of professional standards, training and certification.**

- The State Government may prescribe professional standards to be achieved by officials dealing with procurement matters under this Act and specify suitable training and certification requirements for the same.

#### **49. Confidentiality.**

(1)Notwithstanding anything contained in this Act but subject to the provisions of any other law for the time being in force providing for disclosure of information, a procuring entity shall not disclose any information if such disclosure, in its opinion, is likely to -(a)impede enforcement of any law;(b)affect the security or strategic interests of India;(c)affect the intellectual property rights or legitimate commercial interests of bidders;(d)affect the legitimate commercial interests of the procuring entity in situations that may include when the procurement relates to a project in which the procuring entity is to make a competitive bid, or the intellectual property rights of the procuring entity.(2)Except as otherwise provided in this Act, a procuring entity shall treat all communications with bidders related to the procurement process in such manner as to avoid their disclosure to competing bidders or to any other person not authorized to have access to such information.(3)The procuring entity may impose on bidders and sub-contractors, if there are any for fulfilling the terms of the procurement contract, conditions aimed at protecting information, the disclosure of which violates sub-section (1).

#### **50. State Procurement Facilitation Cell.**

(1)The State Government shall establish a State Procurement Facilitation Cell which shall be headed by an officer not below the rank of a Commissioner.(2)The State Procurement Facilitation Cell shall discharge the following functions, namely :(a)to maintain and update the State Public Procurement Portal set up under section 17;(b)to arrange for training and certification specified in terms of section 48;(c)to recommend to the State Government measures for effective implementation of the provisions of this Act;(d)to provide guidance, consistent with the provisions of this Act and the rules and guidelines made thereunder, to the procuring entities with respect to the matter relating to public procurement;(e)to study different methods of public procurement and prepare and recommend standard bidding documents, pre-qualification documents or bidder registration documents;(f)subject to the provisions of sub-section (2) of section 28, encourage procuring entities to adopt electronic procurement; and(g)to discharge such other functions as may be assigned to it by the State Government consistent with the provisions of this Act and the rules and guidelines made thereunder.(3)The State Procurement Facilitation Cell shall have the power to require a procuring entity or any other person by notice in writing to furnish such information as may be necessary for performing its functions under this Act.

## **51. Protection of action taken in good faith.**

(1) Every officer or employee of a procuring entity or any member of a committee constituted under this Act, acting under or in pursuance of the provisions of this Act or rules, guidelines, orders or notifications made thereunder shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860). (2) No suit, prosecution or other legal proceedings shall lie against any officer or employee or any other person acting in the discharge of any function under this Act for any loss or damage caused or likely to be caused by any act which is done or intended to be done in good faith and in pursuance of the provisions of this Act. (3) For the purposes of this section, "good faith" shall have the same meaning as is assigned to it under section 52 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860).

## **52. Application of other laws.**

- The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

## **53. Recovery of sums payable under the Act.**

- Any sum payable by any person under this Act shall be recoverable as arrears of land revenue.

## **54. Service of notice, documents and orders.**

(1) For the purposes of this Act a notice, document or order shall be deemed to be served, -(a) on any individual by, -(i) delivering it to the person personally; or (ii) leaving it at, or sending it by post to, the address of the place of residence or business of the person last known; (b) on a body corporate by leaving it at, or sending it by post to, the registered office of the body corporate. (2) For the purposes of this Act, when the procedure laid down by subsection (1) is followed, service shall be deemed to be effected by properly addressing, preparing and posting the document, notice or order, as the case may be.

## **55. Power of State Government to make rules.**

(1) The State Government may, by notification, make rules for carrying out the provisions of this Act and different sets of rules may be made for different classes or categories of procurements or procuring entities. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely : (i) procurements covered under sub-section (4) of section 3; (ii) matters to be decided while determining need for procurement under section 5; (iii) circumstances in which participation of bidders may be limited under section 6; (iv) identification and treatment of conflict of interest situations under section 7; (v) additional qualifications to be fulfilled by bidders under clause (f) of sub-section (1) of section 7; (vi) time frame for various stages of the process of procurement under section 9; (vii) information or record of procurement proceedings required to be maintained under clause (i) of sub-section (1) of section



10;(viii)code of integrity under section 11;(ix)guidelines for drawing up the description of the subject-matter of procurement under section 12;(x)evaluation criteria under sub-section (1) of section 14;(xi)maintenance of records of trials and testing under sub-section (2) of section 14;(xii)provisions relating to price negotiations under section 15;(xiii)terms and conditions of procurement contracts under section 16;(xiv)information to be provided on the State Public Procurement Portal under section 17;(xv)procedure for pre-qualification under section 18;(xvi)procedure and conditions for registration of bidders under section 19;(xvii)provisions relating to content of bidding documents under section 20;(xviii)standard conditions of bidding documents including its form under sub-section (3) of section 20;(xix)procedure for submission, opening and evaluation of bids, including constitution of committees for those purposes under section 24;(xx)procedure in respect of various methods of procurement under section 28;(xxi)manner of publication of bid under sub-section (5) of section 29;(xxii)provisions relating to monetary value for procurement through request for quotations and spot purchase under section 34;(xxiii)form, manner and fee for appeals under section 38;(xxiv)procedure to be followed while hearing appeal under section 38;(xxv)professional standards, training and certification for officials dealing with procurement matters under section 48;(xxvi)provisions relating to bid securities, performance securities, inspection of works, goods and services, modification and withdrawal of bids, and contract management;(xxvii)any other matter which is required to be prescribed by the State Government for carrying out the provisions of this Act.(3)All rules made under this section shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days, which may comprise in one session or in two successive sessions and, if before the expiry of the session in which they are so laid or of the session immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

## **56. Power to issue guidelines.**

(1)Subject to the provisions of this Act and the rules made thereunder, a procuring entity may issue guidelines giving details of procedure or general forms or standard specifications and manuals required for giving effect to the provisions of this Act and the rules made thereunder.(2)All guidelines issued by a procuring entity under this section shall be laid, as soon as may be, after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days, which may comprise in one session or in two successive sessions and, if before the expiry of the session in which they are so laid or of the session immediately following, the House of the State Legislature makes any modification in any of such guidelines or resolves that any such guideline should not be made, such guideline shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

## **57. Power to remove difficulties.**

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty : Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act. (2) Every order made under this section shall be laid, as soon as may be after it is made, before the House of the State Legislature.

## **58. Power to exempt.**

(1) If the State Government is satisfied that it is necessary in public interest so to do, it may, by order published in the Official Gazette and for reasons to be recorded in such order, exempt any procurement or a class or category of procurements or a class or category of procuring entities from the application of all or any of the provisions of this Act. (2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before the House of the State Legislature.

## **59. Savings.**

- All rules, regulations, orders, notifications, departmental codes, manuals, bye-laws, official memoranda or circulars relating to procurement of goods, services or works provided for in this Act, which are in force on the date of commencement of this Act, shall continue to be in force to the extent they are consistent with the provisions of this Act, until they are repealed or superseded by any rule, guideline, notification or order, as the case may be, made or issued under this Act.