

The Draft H.P. Public Procurement Bill has been amended incorporating the comments and suggestions received from various stakeholders. The Final draft is again put on the website to seek comments and suggestions from all the stakeholders which may be sent at the following address:

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THE DRAFT H.P. PUBLIC PROCUREMENT BILL, 2010

Preamble

The procurement for goods in the State is being carried out under the Store Purchase Rules as incorporated in the Appendix 10 of HPFR Vol-II as amended upto 14/3/2000. These Rules are called "Procedure and Rules for the purchase of Stores by all Departments and Offices of Govt. of Himachal Pradesh." The procurement of Works is being carried out under the PWD Manual, CPWD Manual, Guidelines issued by the Ministry of Road Transport and Highways (MORTH) or any other donor Agency. It has been felt that there is need for standard procurement procedure supported by the procurement reforms such as e-Government Procurement (e-GP) so as to render the process of procurement of goods, works and services by Procurement Entities transparent and more efficient by streamlining the procedure in inviting, processing and finalisation of tenders.

This Act is intended to streamline procedures in Public Procurement and also ensure transparency and accountability in public procurement.

THE DRAFT H.P. PUBLIC PROCUREMENT BILL, 2010

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A BILL

entitled

H.P. PUBLIC PROCUREMENT BILL, 2010

An Act to provide for the basic principles and procedures to be applied in and to regulate the public procurement of goods, works, services and matters connected therewith and incidental thereto:

Whereas to maximize economy and efficiency in public procurement for obtaining best value for public expenditures;

And whereas to promote economic development including capacity building in the field of public procurement and development of local industries;

And whereas to promote competition and fostering participation in public procurement proceedings by qualified suppliers, contractors and consultants;

And whereas to provide equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment to all bidders;

And whereas to promote integrity, fairness, accountability and public confidence in the public procurement process;

And whereas to achieve transparency in the procedures, processes and decisions relating to public procurement.

Now, therefore, it is expedient to provide for a Public Procurement Law to regulate the public procurement of goods, works, services and matters connected therewith and incidental thereto.

Be it enacted by the H.P. State Legislature in the _____ year of the Republic of India as follows:-

	CHAPTER I
	GENERAL PROVISIONS
<i>Short title, extent and commencement</i>	1. (1) This Act may be called as the H.P. Public Procurement Act, 2010. (2) It extends to the whole of the State of Himachal Pradesh. (3) The Act shall come into force on such date as the Government, may by notification appoint.
<i>Definitions</i>	2. In this Act, unless the context, otherwise requires:-
a)	“Applicant” means a person who applies to become pre-qualified in response to an Invitation for Pre-qualification or to be considered for enlistment as a potential Tenderer for the purposes of the Restricted Tendering Method or to be short-listed in response to a request for Expressions of Interest.
b)	“Approving Authority” means the authority which decides on award of a procurement contract under the Delegation(s) of Financial Powers or an authority/officer authorised by the Head of a PPE under such delegation to take decision on award of procurement contract.
c)	“Bidder” or “Tenderer” or “Proponent” means any person, firm, organization or company that submits bid or proposal to take part in public procurement proceedings;
d)	“Bid” means a tender or an offer or proposal or quotation made by a bidder in the format specified by a Public Procuring Entity as per the notice published by that entity for procurement;
e)	‘Bidding Documents’ means the set of papers making invitation to bid for submission by the bidders by filling up or preparing price or proposal or rate in such document and this term also includes instructions to bidders, specifications, drawing, design, terms of reference, schedule of work, evaluation criteria, bill of quantities, conditions of contract and similar other documents;
f)	Central Purchase Management Unit (CPMU) means the State Level Procurement Organisation constituted under Section 6(1).
g)	Controller of Stores(COS) means the Head of CPMU constituted under section 6(1).
h)	"Competent Authority" means, in respect of the power to be exercised under this Act, the Governor or such other authority to which the power is delegated by or under this Act, H.P. Financial Rules, 2009, Manual of Works, Accounts Codes and Treasury Rules as applicable in the State of Himachal Pradesh or any other

	general or special orders issued by the Government.
i)	“Concession contract” means works or services contract under which the consideration given by the Public Procuring Entity consists of or includes the right to exploit the works or services to be provided under the contract.
j)	“Conflict of interest” means any situation where personal or business interests of any supplier, contractor or consultant in a public procurement proceedings may adversely affect the interests of a Public Procuring Entity (PPE) in achieving best value for money, transparency, fairness and equitable treatment of tenderers.
k)	“Contractor” or “construction entrepreneur” means a person under contract with the Public Procuring Entity for the execution of works/services.
m)	“Coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person in any manner to influence improperly the actions of a person;
n)	“Collusive practice” means an arrangement between two or more persons designed to achieve an improper purpose, including to influence improperly the actions of another person;
o)	“Consultant” means a person under contract with the Public Procuring Entity for providing intellectual or professional services.
p)	“Corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly of anything of value to influence improperly the actions of another person in the procurement process or contract execution;
q)	“Delegation of financial powers” means the orders regarding delegation of financial authority, issued by the Govt. from time to time relating to the conduct of public procurement or sub-delegation of financial powers under such delegation.
r)	“Earnest Money Deposit” or “Bid Security” means monetary guarantee furnished by a bid along with its bid.
s)	“Framework contract” means a contractual arrangement between one or more Public Procuring Entities and one or more suppliers which allows the Public Procuring Entities to procure goods that are needed continuously or repeatedly at an agreed price over an agreed period of time, through the placement of a number of orders;
t)	“Fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead, a person to obtain a financial or other benefit

	or to avoid an obligation;
u)	“Goods” means raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible assets and intellectual property, software development as well as services incidental to the supply of the goods if the value of the services does not exceed the value of the goods themselves;
v)	"Government" means the Govt. of Himachal Pradesh or any Administrative Department thereof;
w)	“Head of Public Procuring Entity” means the Secretary of the Govt. Department, Head or the Chief Executive Officer of the Directorate or Organisation or by what ever designation called, an autonomous or semi-autonomous body, Board or a Corporation.
x)	“In writing” means any communication written by hand or machine duly signed and includes properly authorized messages by facsimile or electronic mail;
y)	“Selective Tendering procedure” are those procedures under which procurement of goods or works by inviting bids from limited number of qualified suppliers or contractors from whom the goods and related services or works and physical services are known to be available.
z)	“Low value procurement” means a procurement activity or initiative where the total amount of expenditure incurred on the consolidated purchase is of a pecuniary value as may be prescribed.
aa)	“Medium enterprise” means an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause (iii) of clause (b) of sub-section (1) of section 7 of Micro, Small and Medium Enterprises Development Act, 2006;
ab)	“Micro enterprise” means an enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7 of Micro, Small and Medium Enterprises Development Act, 2006;
ac)	“Notice Inviting Tenders (NIT)” means invitation for bids through advertisement containing details of the requirement.
ad)	“Open Tendering Procedure” are those procedures under which procurement of goods or works or services by inviting tenders

	from large number of qualified suppliers or contractors or consultants by the issue of open advertisement.
ae)	"Person" means any physical or juridical entity or individuals or a firm, company or an organisation, whether incorporated or not.
af)	"Post-qualification" means a process undertaken by a Public Procuring Entity at the end of the tender evaluation stage to check that the successful bidder meets the qualification on the basis of which it was pre-qualified and qualification requirements set out in the tender document.
ag)	"Pre-qualification" means a pre-tendering selection process by which an applicant is invited by a Public Procuring Entity to show through documents or otherwise, that s/he is capable of meeting the requirements of a specific future tender.
ah)	"Prescribed" means prescribed by rules made under this Act.
ai)	"Proposal" means a submission of an offer by a bidder in writing for the provision of intellectual and professional services that is presented to a Public Procurement Entity in response to a Request for Proposal (RFP).
aj)	"Public Procurement Entity" means any Government Department, a State Public Sector Undertaking (PSU), Local Authority or Board, Body or Corporation established by or under any law and owned or controlled by the Government and any other body or authority owned or controlled by the Government;
ak)	"Public funds" are funds provided to Public Procuring Entities by the Government or revenues generated by statutory bodies or Public Sector Undertakings (PSUs) or aid or grants or credits placed at the disposal of Public Procuring Entities through the Government by the Donor Agencies.
al)	"Public procurement " means buying, purchasing, renting, leasing or otherwise acquiring any goods or works or services from domestic or foreign suppliers by a Public Procuring Entity spending public funds.
am)	"Procurement contract" means any licence or permit or other concession or authority issued by a Public Procuring Entity or entered into between a Public Procuring Entity and a supplier or contractor or consultant, resulting from procurement proceedings pursuant to Section (63);
an)	Procurement Management Unit (PMU) means a cell at the

	Public Procurement Entity level for the management of public procurement constituted under section 10(3).
ao)	“Quality” means the quality of goods, works or services;
ap)	“Quotation” means the offer with price received in writing from the tenderers for the procurement of standardized goods or works subject to pecuniary limitations as may be prescribed;
aq)	“Responsive” means qualified for consideration on the basis of evaluation criteria as specified in the bidding documents or in the Request for Proposal (RFP) document;
ar)	“Security Deposit” or “Performance Security” means monetary guarantee furnished by the successful bidder for the performance of the contract concluded with it.
as)	<p>“Services” means any of the following categories of services:</p> <p>(i) ‘related services’ are generally linked directly to the supply of goods and if the value of such services does not exceed the value of goods, these shall form an inseparable part of the goods.</p> <p>(ii) ‘physical services’ are those generally linked directly to works and if value of such services does not exceed the value of works, these shall form an inseparable part of works.</p> <p>(iii) ‘Intellectual and professional services’ are those services which provide output of advisory, design and know-how transfer nature rendered by the Consultants.</p> <p>(iv) “Other Services” means the act of hiring motor vehicles, equipment or goods, carriage or repair and maintenance of goods etc;</p>
au)	“Shortlist” means a list of applicants considered suitable by Public Procuring Entity for submitting proposals for intellectual and professional services following the evaluation of applications.
av)	“Small enterprise” means an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7 of Micro, Small and Medium Enterprises Development Act, 2006;
aw)	“State” means the State of Himachal Pradesh.
ax)	“Supplier” means a person under contract with a Public Procuring Entity to supply goods or works or services. The word “contractor or construction entrepreneur” , “consultant” and “Service Provider” are synonymous with the word “supplier” depending on the object of procurement. The word supplier relates to a Goods Contract; the

	word contractor relates to a Works Contract and the word consultant relates to an intellectual and professional Services Contract.
ay)	“Technical Evaluation Committee (TEC)” means a Committee constituted under section 8(1) of the Act for the examination and evaluation of tenders for the procurement of goods and works. The Committee constituted for the evaluation of proposals for the procurement of Intellectual and Professional services will be called “Proposal Evaluation Committee (PEC)”;
az)	“Tender Opening Committee (TOC)” means a Committee constituted under section 7(1) of the Act for the opening of tenders for the procurement of goods, works and services. The Committee constituted for the evaluation of proposals for the procurement of Intellectual and Professional services will be called “Proposal Opening Committee (POC)”;
ba)	‘Works or construction works’ means the execution including associated design services, of works related to construction, reconstruction, repair or maintenance or renovation of a building or structure or any construction works such as forestry & horticultural plantation works, soil conservation works like check dams, check walls, water harvesting structures, minor irrigation works, highways, site preparation, excavation, installation of equipment and material, decoration, including physical services incidental to the works, provided the value of the physical services does not exceed the value of the works;
<i>Standard Abbreviations</i>	(3) Standard abbreviations as listed below have been used in this Act.
COS	Controller of Stores
CPMU	Central Purchase Management Unit
DGS&D	Directorate General of Supplies & Disposals
EOI	Expression of Interest
IFB	Invitation for Bids
NIT	Notice inviting Tender
NAC	Non Availability Certificate
PPE	Public Procuring Entity
PEC	Proposal Evaluation Committee
POC	Proposal Opening Committee
PSU	Public Sector Undertaking
TEC	Technical Evaluation Committee
TOC	Tender Opening Committee

<i>Scope</i>	<i>and</i>	(4.) This Act applies to all procurement carried out by Public
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<i>Application</i>	Procurement Entities (PPEs) including procurement of all goods, works and services funded out of public funds, subject to section 5.
<i>Exceptions to applicability</i>	<p>(5.) The provisions of this Act shall not apply to procurement of goods, works and services under the following circumstances :-</p> <p>(a) During the period of natural calamity or emergency or disaster declared by the Government in relation to procurement of goods, works and services as notified by the Govt.</p> <p>(b) If the provisions of any agreement signed by the State Govt. or Government of India with one or more countries or International Organization(s) come into conflict with any of the provisions of this Act, the provisions of that agreement shall prevail over this Act.</p> <p>(c) in respect of specific procurements as may be notified by the Government.</p>
	CHAPTER II
	ORGANISATION FOR PUBLIC PROCUREMENT
<i>Organization for public procurement</i>	<p>6. (1.) At the State level, the Central Organisation for policy formulation, co-ordination and monitoring of the public procurement process as well as finalization of framework contracts will be Central Purchase Management Unit (CPMU) headed by the Controller of Stores. The functions of CPMU shall be as under:-</p> <p>(a) monitor compliance with the provisions of this Act and propose any amendment to them or any new laws and Rules regarding public procurement which appear necessary in the light of international practices and experience gained in the course of the public procurement process in the State;</p> <p>(b) issue guidance and instructions regarding the interpretation and implementation of provisions of this Act and give, on request, advice and assistance to PPEs without, however, diminishing the responsibility of a PPE; the Controller of Stores shall not get involved in or provide opinion on any specific procurement or contract award decision;</p> <p>(c) prepare standard documents to be used in connection with public procurement;</p> <p>(d) present an annual report to the Government regarding the overall functioning of the public procurement system, including recommendations on measures to be taken by the Government to revise and improve procurement approval method and other measures to enhance the quality of procurement work;</p> <p>(e) request and receive information/records from PPEs to the extent appropriate to its information needs; taken by the Government to revise and improve procurement approval method</p>

	<p>and other measures to enhance the quality of procurement work;</p> <p>(e) request and receive information/records from PPEs to the extent appropriate to its information needs;</p> <p>(f) develop a public procurement website with information relating to public procurement in the State, including information concerning the award of contracts exceeding a certain threshold determined by the CPMU;</p> <p>(g) develop, promote and support training and professional development of officials and other persons engaged in public procurement, including their adherence to the highest ethical standards;</p> <p>(h) provide technical assistance in the field of public procurement through the dissemination of procurement technical guidance notes; and</p> <p>(i) maintain and update a list of eligible and capable suppliers/contractors with a view to establishing reliable sources for procurement of goods, works & services commonly required for Government use.</p> <p>(j) maintain and update a list of tenderers and suppliers who, by reason of having seriously neglected their obligations under a public procurement contract, or having provided false information about their qualifications, or having offered inducements of the kind referred to in section ----, have been debarred from participating in public procurement.</p> <p>(k) Any other matter as may be prescribed.</p> <p>(2) Notwithstanding anything contained in Sub-section (1), CPMU shall not involve in any manner in the procurement proceedings, except the procurement proceedings of its office, of other PPEs nor shall resolve any dispute arisen in respect thereof.</p>
<i>Tender/Proposal Opening Committee</i>	<p>7. (1.) For the purpose of opening tenders or proposals the Head of PPE or any other person authorized, will constitute a Tender Opening Committee (TOC) or Proposal Opening Committee (POC) comprising a minimum of 3 members, at least one of them shall be the member of the Tender Evaluation Committee (TEC). However, the TEC can also be the TOC.</p> <p>(2) The functions of Tender Opening Committee shall be as prescribed.</p>
<i>Technical Evaluation Committee.</i>	<p>8.(1) For the purpose of examination and evaluation of tenders the Head of PPE or any other person authorized, will constitute a Tender Evaluation Committee (TEC) or Proposal Evaluation Committee (PEC).</p> <p>(2.) The TEC shall consist of a minimum of three members and one shall be from outside the PPE and shall have the professional knowledge required to assist in the evaluation of those particular tenders. The outside member of the TEC shall be selected and</p>

	<p>appointed by the Head of PPE or an officer authorised by him/her.</p> <p>(3.) When the indent by the PPE has been placed on the CPMU on any other PPE with the approval of Govt., one of the members in the TEC will be from the Indenting PPE to be nominated by the Head of that PPE.</p> <p>(4.) If a PPE handles only a limited number of tenders yearly, it can constitute only one TEC to handle all the procurement for that PPE;</p> <p>(5.) If a PPE finds that its procurement is such that many tenders are to be examined and evaluated monthly, whereby it would not be practical or reasonable to have only one TEC; it may constitute more than one TEC.</p> <p>However, the evaluation of tenders for the same procurement object shall, under no circumstances, pass through more than one TEC.</p> <p>(6.) The functions of TEC and the procedure to be followed in the evaluation of tenders may be prescribed.</p>
	<p>CHAPTER III</p>
	<p>PROCUREMENT PLANNING AND PROCUREMENT METHODS</p>
<p><i>Description of goods, works and services to be prepared</i></p>	<p>9. (1) Prior to procuring goods, construction works or services, a PPE shall have to prepare specifications, plan, drawing, design, special requirement or other descriptions pertaining thereto.</p> <p>(2) The description as referred to in Sub-section (1) shall be based on international standards, where such exist; otherwise, on national technical regulations, recognised national standards or building codes.</p> <p>(3) The Technical specifications shall be prepared on the basis of relevant objective technical and quality characteristics and wherever appropriate, in terms of performance rather than design or descriptive characteristics.</p> <p>(4) In preparing the description pursuant to sub-Sections (1), (2) and (3), unless there exists any other way of mentioning clearly in an intelligible manner the characteristics of the goods, construction works or services, a particular brand, trademark, name, patent, design, type, origin or producer's name cannot be mentioned .</p> <p>Provided that where there is no other way than such mentioning, a particular brand, trademark, name, patent, design, type, origin or producer's name shall be mentioned and the words "equivalent to" shall be mentioned thereafter.</p> <p>(5) In mentioning in the bidding documents or pre-qualification documents, the description of the technical or quality characteristics of the goods or construction works or other services, and requirements or symbols or terminologies relating to testing, marking, packaging, labeling or conformity certificate, no description, requirements, symbols or terminologies can be so mentioned as to be irrelevant to the function of such goods or</p>

	<p>construction works or services, to create obstacles, in any manner, to participation by qualified bidders in the procurement process or to limit competition without any justification.</p> <p>(5) The PPE shall prepare descriptions of procurement requirements in conformity with applicable environmental protection legislation and the relevant provisions in the Rules.</p>
<p><i>Procurement planning and preparation of cost estimate</i></p>	<p>10. (1) A PPE shall, in making procurement valued at an amount in excess of the prescribed pecuniary limit, have to prepare a master procurement plan and annual procurement plan, as prescribed.</p> <p>(2.) A PPE will prepare cost estimates including revisions thereof, for procurement of goods, works and services as prescribed.</p> <p>Provided that a cost estimate shall not be required for procurement of goods, works and services upto a pecuniary limit as may be prescribed.</p>
<p><i>Responsibility towards procurement activities</i></p>	<p>11. (1) The Head of the concerned PPE shall be responsible for preparing a procurement plan pursuant to Section 10 (1) and carrying out or causing to be carried out all other activities relating to procurement to be made by fulfilling the procedures referred to in this Act.</p> <p>(2.) A PPE shall, in carrying out procurement related activity pursuant to Sub-section (1), carry out so through an employee who has the qualification and knowledge or training on procurement business.</p> <p>(3) A PPE shall establish a Procurement Management Unit (PMU) in order to carry out the following acts:</p> <ol style="list-style-type: none"> (a) Planning of procurement; (b) Preparation of invitations to bid or to apply for pre-qualification, the pre-qualification documents, and the bidding documents; (c) Publication and distribution of invitations to bid; (d) Reception and safeguarding of applications to pre-qualify and bids; (e) Evaluation of bids; (f) Obtaining approvals of the competent authority for the award recommendation; (g) Issuing the notification of award and signature of the contract document, if one is required; (h) Receiving the performance security and verifying its correctness and the safe-keeping thereof; (i) Administering implementation of procurement contracts to the extent that administration of contracts procured by the Department or Unit is carried out by the end-user departments for whom those contracts have been procured; (j) Assessment of the quality of the procured goods, works

	<p>and services;</p> <p>(k) Any other functions as may be prescribed.</p> <p>(4) In carrying out or causing to be carried out the functions as referred to in Sub-section (3), the PMU shall carry out the same with the approval of the Head of the concerned PPE.</p>
<i>Delegation of financial powers</i>	<p>12. (1.) The delegation of financial powers in PPEs for procurement of goods, works and services will be as prescribed by the Govt. from time to time.</p> <p>(2.) No PPE will procure goods, works or services except as provided under the provisions of this Act.</p>
<i>Forms of communication</i>	<p>13. (1) All communications between parties of the procurement i.e. Applicants, bidders, Suppliers, Contractors, Consultants and PPEs shall be in writing as prescribed.</p>
<i>Procurement Preference Policy</i>	<p>14. (1) For facilitating promotion and development of micro, small, medium and large enterprises, the State Government may, by order, notify preference policies in respect of procurement of goods, works and services, produced and provided by these enterprises.</p> <p>(2.) 5 % price preference shall be provided to the products of Micro, Small and Medium enterprises and 3 % to the products of large enterprises working in the State who participate themselves in the tender proceedings of the PPEs.</p> <p>(3.) While placing orders, preference shall be given to micro, small, medium and large enterprises working in the State and at least 30% of the total orders shall be placed with them on lowest approved rates provided such products meet the required quality standards.</p> <p>(4.) The price preference is to be accorded to the deserving industrial enterprises as an incentive to grow; but it should not promote inflation, profiteering or misuse of these enterprises as conduits.</p> <p>(5.) The price preference under sub-rule (1) shall not be admissible if such enterprises participate in the tender proceedings through an Authorised Dealer.</p> <p>(6.) Where a foreign bidder enters into joint venture with a domestic contractor, in the case of procurement of public construction work, preference may be given to such a foreign bidder.</p> <p>(7.) The procedure for claiming the procurement preferences may be prescribed.</p> <p>(8.) The State Government may also provide procurement preference to its PSUs, Boards and its aided institutions.</p>
<i>Records of procurement</i>	<p>15. (1) All PPEs will maintain records of their respective procurement proceedings along with all associated documentation as prescribed for a minimum period of three years.</p>

<p><i>Selection of Procurement Method</i></p>	<p>16. (1) A PPE while procuring shall have to procure by applying any of the following methods based on such conditions and purchase price as prescribed:-</p> <p>(a) For procurement of goods, construction works or other services by inviting:</p> <ul style="list-style-type: none"> (a) Open bids at national level, (b) Open bids at international level, (c) Limited Tender system, (d) Single Tender System, (e) Purchase without inviting quotation (f) Purchase through Purchase Committees. (g) Procurement through users' committees or beneficiary community, (h) Any other method as may be prescribed. <p>(b) <u>Procurement of consultancy service:</u></p> <ul style="list-style-type: none"> (a) By requesting competitive proposals, (b) Through direct negotiations. (c) Selection of individual consultant (d) Any other method as may be prescribed <p>(2) In making procurement pursuant to this Act and the rules framed under this Act, procurement shall not be so made in piecemeal as to limit competition.</p>
	<p>CHAPTER-IV</p>
	<p>PARTICIPATION IN PROCUREMENT PROCESS</p>
<p><i>Non-discrimination</i></p>	<p>17. Except as otherwise provided in this Act, a PPE making any procurement shall, to the extent possible, use open bidding procedures and provide equal opportunity to all qualified bidders to participate in such procurement process without any discrimination.</p>
<p><i>Conflict of Interest</i></p>	<p>18. (1) A bidder who prepares the specifications or bidding documents for the procurement contract or supervises the execution of a procurement contract, including any affiliate of such a bidder shall not participate in bidding for such procurement contract as prescribed.</p> <p>(2) The provision under Sub-section (1) shall not apply to the bidders which are performing the supplier's obligations under a turnkey or design and build contract or PPP such as BOT/BOOT etc.</p>
<p><i>Qualifications of Bidders/suppliers</i></p>	<p>19. (1) A bidder shall have to fulfill the following qualifications in order to obtain a procurement contract:-</p> <ul style="list-style-type: none"> (a) In the case of a bidder, the qualification criteria set forth in the bidding documents or where prequalification proceedings have been conducted for procurement, the qualification criteria set forth in the prequalification documents , and

	<p>(b) In the case of a consultant the qualification criteria set forth in the documents relating to proposals.</p> <p>(2) In setting forth qualification criteria pursuant to Sub-section (1) in the bidding documents or documents relating to proposals, professional and technical qualifications, equipment availability, past performance, after-sale service arrangements, availability of spare parts, legal capacity, financial resources and condition, punishment for having committed professional offenses and similar other criteria may be set forth.</p> <p>(3) In setting forth the criteria pursuant to Sub-section (2), no provision can be so made as to allow only a particular class of contractor, supplier, consultant or service provider to participate or to prevent any particular class of contractor, supplier, consultant or service provider from participating in the procurement process.</p> <p>(4) Bids, pre-qualification proposals and consultancy service proposals shall be evaluated only in accordance with the criteria set forth in the bidding documents, pre-qualification documents and in the documents relating to proposals, respectively, and such criteria shall equally be applicable to all bidders or proponents without any discrimination.</p> <p>(5) Notwithstanding anything contained elsewhere in this Section, no qualification requirements shall be prescribed for the procurement of a construction work the cost estimate of which is less than five lacs rupees.</p> <p>(6) The PPE may disqualify a bidder or proponent at any time if it finds that the statement submitted by such bidder or proponent concerning the qualifications was factually false or substantially incomplete.</p> <p>Provided that minor errors can be corrected by seeking information pertaining thereto from the concerned bidder or proponent.</p>
<p><i>Registration of bidders/suppliers</i></p>	<p>20. (1) Eligible bidders shall be registered by the CPMU or the PPEs to establish reliable source of suppliers, contractors, consultants and service providers for the procurement of goods, works and services. The fee, period of validity and the procedure for such registration shall be prescribed.</p> <p>(2) The facilities to be provided to the Micro, Small and Medium Enterprises registered with CPMU or PPEs may be prescribed.</p> <p>(3.) The facilities admissible under sub-section (2) above shall also be admissible to enterprises registered with DG S&D or NSIC or any other organisation as prescribed.</p>
	<p>CHAPTER- V</p>
	<p>PROFESSIONAL MISCONDUCT, OFFENCES ETC.</p>
<p><i>Professional misconduct,</i></p>	<p>21(1.) No public servant employed in a PPE in the procurement of</p>

<i>offences etc.</i>	<p>goods or works or services under this Act, shall undertake or attempt to undertake any procurement in contravention of provisions of this Act.</p> <p>(2.) A public servant acting in contravention of Sub-section(1) shall be guilty of misconduct under the service Rules as applicable to such public servant and appropriate departmental or criminal proceedings may be initiated against him.</p>
<i>Conduct of bidders and suppliers</i>	<p>22. (1) A bidder or proponent shall have to accomplish such obligations as referred to in this Act or Rules made there under, procurement contract and other documents relating to procurement.</p> <p>(2) Without prejudice to the generalities of the provision of Sub-section (1), a bidder or proponent shall not carry out or cause to be carried out the following acts with the intention of making interference in the procurement process or the implementation of procurement contract:-</p> <ul style="list-style-type: none"> (a) Giving or offering directly or indirectly improper inducement, (b) Submitting a fact by distortion or misrepresentation, (c) Engaging in corrupt or fraudulent practice or involving in such act, (d) Intervening in the participation of other competing bidders or proponent to be involved in any way in the proceedings relating to bid or proposal, (e) Commit an act of threatening directly or indirectly to cause harm to the body, person or property of any person to be involved in the procurement proceedings or coercive act, (f) Making collusion or involving in groupism prior to or after submission of bid or proposal with the objective of allocating procurement contract among the bidders or proponents or fixing the price of bid or proposal artificially or non-competitively or otherwise forbidding the PPE of the benefit of open and free competition, (g) Contacting the PPE from the time of the opening of bid or proposal until the notice of acceptance of bid or proposal is given with the objective of causing interference upon bid or proposal or committing an act of interference in the examination or evaluation of bid or in the evaluation of proposal. <p>(3) A bidder should not have any conflict of interest as provided under Section (18).</p>
<i>Blacklisting and exclusion from the blacklist</i>	<p>23. (1) The CPMU/PPEs may blacklist a bidder, proponent, consultant, service provider, supplier, contractor or other</p>

	<p>person, firm, organization or company on the following grounds from one year to three years on the basis of seriousness of his/her/ act:-</p> <p>(a) If it is proved that s/he has committed an act contrary to the conduct as referred to in Section 22;</p> <p>(b) If a proponent of a proposal selected for acceptance does not come to sign the contract pursuant to Section 63;</p> <p>(c) If it is proved latter that s/he had committed substantial defect in implementing procurement contract or had not substantially fulfilled obligation under the contract or the work carried out according to the procurement contract is not of the quality as per the said contract,</p> <p>(d) If convicted from a court of law in a criminal offense liable to be disqualified for taking part in procurement contract,</p> <p>(e) If s/he/it is proved of having signed the procurement contract by falsifying qualification or misrepresenting,</p> <p>(f) Any other conditions as prescribed.</p> <p>(2) A bidder, proponent, consultant, service provider, supplier, contractor or other person, firm, organization or company blacklisted pursuant to Sub-section (1) shall be debarred from taking part in the procurement proceedings of a PPE up to that period.</p> <p>(3) Notwithstanding anything contained elsewhere in this Section, a person, firm, organization or company blacklisted by a competent authority under prevailing law for not paying a loan of a bank or financial institution shall not be eligible to take part in the procurement proceeding of a PPE during the period of such blacklisting.</p> <p>(4) If any person, firm, organization or company ineligible to take part in the public procurement proceedings pursuant to Sub-section (2) or (3) is found to have taken part in a procurement proceedings of a PPE, no action shall be taken over his/her bid or proposal.</p> <p>(5) Other provisions concerning blacklisting pursuant to Sub-section (1) shall be as prescribed.</p> <p>(6) A bidder, proponent, consultant, service provider, supplier, contractor or other person, firm, organization or company blacklisted pursuant to Sub-section (1), (2), (3), (4), and (5) shall be excluded from the blacklist as per the criteria prepared by the CPMU for exclusion from the blacklist.</p>
	CHAPTER- VI
	PROVISIONS RELATING TO BIDDING
<i>Process and Stages of Bidding</i>	24. (1) In making procurement by bidding, an invitation to bid can be made by the following process:-

	<p>(a) Inviting open bids by determining prequalification, (b) Inviting open bids without determining prequalification. (2) The open bid may be invited in a single stage or in two stages. (3) In making invitation to bid on the conditions set forth in Sub-section (1) of Section 41, it may be made in two stages.</p>
<p><i>Prequalification and post qualification for bidding</i></p>	<p>25. (1) The PPEs for procurement goods of complex nature, high value goods such as industrial plants or with a view to identify qualified bidders, shall, prior to making invitation to bids, prepare prequalification documents and publicly invite proposals for the determination of prequalification. (2) If prequalification is not conducted, the PPEs may carry out post qualification prior to recommending contract award as prescribed. (3) The prequalification documents under Sub-section (1) or (2) shall set forth the qualification criteria required for prequalification and the method for the preparation of proposal and the manner for the submission thereof. (4) The PPE shall provide as prescribed the prequalification documents required to submit proposal as referred to in Sub-section (1) or (2) to all persons, firms, companies and organizations that request for such documents. (5) The selection of the qualified applicant shall be made on the basis of the qualification criteria set forth in Sub-section (3). (6) If any applicant whose prequalification proposal is rejected, requests for the information of the reasons for the rejection of his or her proposal, the concerned PPE shall have to provide such information to him or her. (7) Other provisions relating to the terms and conditions of prequalification and determination thereof shall be as prescribed.</p>
<p><i>Preparation of Bidding Documents</i></p>	<p>26. (1) Prior to invitation to bid, the PPE shall have to prepare the bidding documents. (2) The bidding documents under Sub-section (1) shall contain the following matters:- (a) The nature of procurement, time required for procurement and technical specifications thereof, (b) Where bids are invited without carrying out prequalification, the criteria for qualification of bidders, as referred to in Section 19, (c) Where there is provision of site visit, information relating thereto, (d) If any pre-bid conference has to be held prior to submission of bid, information relating to such conference, (e) Instructions for preparing and submitting bids, the place for the submission of bids, the deadline for the</p>

	<p>submission of bids and the place, date and time for the opening of bids,</p> <ul style="list-style-type: none"> (f) Component of price, the currency or currencies in which the bid price may be stated, the currency and the source and date of the related exchange rate to be used for comparison of bids, (g) The criteria and methodology for the evaluation of bids and the selection of bidder, (h) The preferences to be given, if any, to local industrial or service enterprises, construction entrepreneurs and provision relating thereto, (i) Where any goods or construction works are to be procured by making separate lots and packages, such lots and packages and the manner of evaluation thereof, (j) Where alternatives to the technical specifications are also invited, the manner of evaluation of such alternatives, (k) Where a bid can be submitted even only for a portion of the goods, construction works or services to be procured, a description of such portion or portions, (l) The validity period of bid, (m) The amount, type, acceptable form and validity period of bid security to be furnished, performance or other necessary matters, (n) Where a bid security is required, provision that the period of that security shall exceed by thirty days to the validity period of bid, (o) The terms and conditions of the procurement contract under Section 63 and the modality of coming for the entry into force of that contract, (p) Information that bids shall not be processed in the event of conflict of interest or information relating to legal action for fraud or corruption, (q) Provision that any bidder may make an application, for review, against any error or decision made by the PPE in carrying out bid proceedings, (r) Provision that the documents proving technical capacity and financial proposal (bid price) have to be submitted in one envelope, and (s) Such other matters determined by the CPMU as to be involved in the prequalification documents or bidding documents. <p>(3) The PPE shall make available the bidding documents upon collection of the charges as prescribed to any person, firm, organization or company that requests for the bidding documents in accordance with the notice for invitation to bids, and where prequalification is required to participate in the procurement</p>
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	proceedings, to those persons, firms, organizations or companies that have been pre-qualified and request for such documents.
<i>Invitation to bids</i>	<p>27. (1) A notice for invitation to bids or prequalification proposals shall have to be published in a regional daily newspaper and one newspaper of national circulation and, in the case of an international bid; it may also be published in any international communication media.</p> <p>(2) The notice as referred to in Sub-section (1) shall be placed in the website of the concerned PPE or that of the CPMU.</p> <p>(3) A notice on invitation to bid or prequalification proposal shall contain the following matters:-</p> <ul style="list-style-type: none"> (a) The name and address of the PPE inviting bid, (b) The nature of and time limit for procurement work and the place of delivery of the goods to be supplied, the services to be delivered and the construction work to be performed, (c) If bid security is required, the amount and validity period thereof, (d) Where bid security is required, the amount and validity period of the bid, (e) The place, manner of obtaining the bidding documents or pre-qualification documents, and the fees charged therefor, (f) The place, manner, the deadline for the submission or forwarding of the bidding documents or pre-qualification documents, (g) The place, date and time for the opening of bids, and matter that the bidders or their authorized agents shall be invited to attend the opening of bid; (h) Details of procurement preference admissible; (i) Evaluation criteria of the bids; and (j) Other matters as prescribed. <p>(4) In publishing a notice under Sub-section (1), for invitation of national level bidding the period for the receipt of tenders shall not be less than forty (40) days from the date of publication referred to under sub-section(1) and 25 days for the submission of pre-qualification documents. The period shall not be less than ten (10) days in case of public procurement under emergency conditions.</p> <p>(5) In selective procedures, the period for receipt of tenders shall not be less than 40 days from the date of initial issuance of invitation to tender.</p> <p>(6) The minimum period of 40 days provided under sub-sections (4) & (5) can be reduced to 24 days under conditions as may be prescribed.</p> <p>(7) While stating the place from which the bidding documents or</p>

	<p>prequalification documents can be obtained pursuant to clause (e) of Sub-section (3), provision can be made for obtaining such documents from the field Offices of such PPE.</p> <p>(8) While stating the place for submitting or forwarding the bidding documents or prequalification documents pursuant to clause (f) of Sub-section (3), provision shall be made that such documents shall be submitted or forwarded to only one office of PPE.</p> <p>(9) Where any bidder or proponent requests for security for submitting or forwarding the bid or prequalification proposal pursuant to Sub-section (8), the concerned PPE shall mandatorily make security arrangements immediately.</p> <p>(10) A foreign bidder, while submitting bid, shall have to state whether he/she has appointed any agent in the India or not.</p> <p>(11) Where an agent is appointed pursuant to Sub-section (8), the details as prescribed in relation to the agent shall also be set forth in the bid.</p>
<p><i>International Level Bidding</i></p>	<p>28. (1) While making invitation to bid pursuant to this Act, an international level bid shall be invited in any of the following conditions:-</p> <ul style="list-style-type: none"> (a) Where the goods or works or services as requisitioned by a PPE are not available under competitive price from more than one supplier within India, (b) Where no bid was submitted in response to invitation to national level bidding for the procurement of goods, works or services and the same has to be procured from abroad, (c) Where under an agreement entered into with a Donor Agency, procurement have to be made from foreign assistance source, (d) Where the PPE has certified that the goods or works or services being of complex and special nature, have to be procured through an international level bidding. <p>(2) A notice on invitation to international bidding as referred to in this Section shall be published in English language; and all bidding or prequalification documents shall have to be made available in the English language.</p> <p>(3) The notice referred to in Sub-section (2) shall have to be placed in the website referred to in Sub-section (2) of Section 27.</p>
<p><i>Clarification as to Bidding or Prequalification Documents</i></p>	<p>29. (1) Where any bidder, being unclear about any matter set forth in the bidding documents or the prequalification documents, requests, within the time period set out in such documents, for a clarification, the PPE shall have to communicate the information of such matter to all bidders prior to the deadline for the submission of bids or prequalification proposals.</p> <p>(2) Where the PPE makes any alteration/modification in the</p>

	<p>information under Sub-section (1) and the bidding documents or prequalification documents, it shall have to communicate information relating to such alteration/modification to all bidders that have participated in the procurement proceedings within a reasonable time so as to enable them to take such alteration/modification into account in submitting their bids or preparing their proposals for prequalification.</p> <p>(3) Where it is necessary to provide additional time to bidders for the action under Sub-section (2), the PPE may extend the deadline for the submission of bids or prequalification proposals.</p>
<i>Deadline for Submission of Bids or Prequalification Proposals</i>	<p>30. (1) The PPE shall have to so set the deadline for the submission of bids or prequalification proposals as not to be less than the period set forth in Sub-section (4) of Section 27 and as to allow sufficient time for bidders to prepare or submit such bids or proposals.</p>
<i>Method of submission of Bids</i>	<p>31.(1) A bid shall have to be submitted in the specified form, duly signed by the bidder himself /herself or his /her authorized agent, in a sealed envelope by the bidder himself /herself or through his or her authorized agent or by post or courier at such place and within the last date and time as specified for the submission of bids.</p> <p>(2) Bids received after the deadline under Sub-section (1) shall not be processed and such bids shall be returned unopened to the concerned bidder.</p>
<i>Withdrawal and Modification of Bid</i>	<p>32. (1) A bidder may, prior to expiry of the deadline for the submission of bids, make a sealed application for modification to or withdrawal of bid that a bidder has once submitted.</p> <p>(2) Other provisions relating to the withdrawal or modification of bid shall be as prescribed.</p>
<i>Validity Period of Bid</i>	<p>33. (1) The validity period of a bid shall be as specified in the bidding documents.</p> <p>(2) The period as referred to in Sub-section (1) shall commence from the deadline for the submission of bids.</p> <p>(3) Notwithstanding anything contained in Sub-section (1), the PPE may, if so required to extend the validity period of bids after the opening of bids, extend the validity period of bids, as required assigning reasons thereof.</p> <p>(4) In extending the validity period of bid pursuant to Sub-section (3), consent of the concerned bidders shall have to be obtained.</p> <p>(5) A bidder who agrees to extend the validity period of his/her/its bid pursuant to Sub-section (4) shall correspondingly extend the validity period of bid security.</p> <p>(6) The bid security of the bidders not providing consent pursuant</p>

	to Sub-section (4) shall be returned.
<i>Bid security or Earnest money and Performance Security</i>	<p>34. (1) A bidder shall provide as prescribed bid security along with the bid.</p> <p>(2) The bid security furnished pursuant to Sub-section (1) shall be forfeited in the following conditions:-</p> <ul style="list-style-type: none"> (a) If a bidder requests for modification or withdrawal of bid during the validity period of bid, after the deadline for the submission of bids, (b) If a bidder refuses to accept the correction of arithmetical errors found in the bid, (c) If the selected bidder fails to sign the procurement contract in accordance with the terms and conditions set forth in the bidding documents, (d) Where a bidder fails to furnish the performance security as set forth in the bidding documents within the time for signing the procurement contract, (e) If a bidder has changed the bid price or substantive matter of the bid while providing any information in response to clarification sought by the PPE pursuant to Sub-section (4) of Section 36 in the course of examination of bids. (f) If any act contrary to conduct as referred to in Section 22 is committed. <p>(3) After the conclusion of a procurement contract under Section 63, the PPE shall return the bid security of the bidder who has signed the procurement contract and the bid security of those bidders whose bid security is not liable to forfeiture pursuant to Sub-section (2).</p>
<i>Opening of bids and late bids</i>	<p>35. (1) In a PPE the bids shall be opened by the TOC or POC constituted pursuant to Section 7(1) as prescribed at the time and place specified in the bidding documents on the same day immediately after expiry of the deadline for the submission of bids.</p> <p>(2) Late bids will not be accepted and will be returned to the bidders. However, the bidders shall not be penalised if the bid is received in the office designated in the tender documentation after the time specified because of delay due solely to mishandling on the part of PPE.</p>

<p><i>Examination of Bids</i></p>	<p>36. (1) The PPE shall have to submit to the TEC constituted pursuant to Section 8(1) the bids opened pursuant to Section 35.</p> <p>(2) The TEC shall, prior to evaluating the bids submitted pursuant to Sub-section (1), examine the bids in order to ascertain the following matters:-</p> <ul style="list-style-type: none"> (a) Whether documents establishing that the bidder is qualified under law to submit the bid are submitted or not, (b) Whether the bid is complete in accordance with the instructions to bidders set forth in the bidding documents or not and whether it is signed by the bidder or by the bidder's authorized agent or not, (c) Where a bid security is required to be submitted along with the bid, whether a bid security of such type, period and amount as set forth in the bidding documents is accompanied with the bid or not, (d) Whether the bid is substantially responsive to the technical specifications set forth in the bidding documents and the terms and conditions of procurement contract attached with the bidding documents or not. <p>(3) In examining the completeness of bids pursuant to clause (b) of Sub-section (2), the following matters shall be examined:-</p> <ul style="list-style-type: none"> (a) Whether a power of attorney for the authorized agent or local agent of the bidder is submitted or not, (b) Where a joint venture agreement is necessary, whether such agreement is submitted or not, (c) Whether documents establishing the eligibility of the bidder and of goods mentioned by the bidder are submitted or not, (d) Whether necessary documents relating to the qualifications of the bidder is submitted or not, (e) Where the bidding documents require the submission of a rate analysis, whether such rate analysis is submitted or not, (f) Other matters as prescribed. <p>(4) The PPE may, in the course of examining the bids pursuant to this Section, ask bidders for additional information, if required.</p> <p>(5) The concerned bidder shall have to provide the information sought by the PPE pursuant to Sub-section (4) to the PPE, and in providing such information, no change or alteration in the bid price or other substance of the bid shall be allowed.</p> <p>(6) In examining bids invited after determination of prequalification, examination of the qualification of bidder shall be made to ascertain whether or not it conforms to the prequalification or not.</p>
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	<p>(7) While examining the qualification pursuant to Sub-section (6), if the qualification of a bidder is found to be substantially lower than what was at the prequalification stage, the bid of such a bidder shall be rejected.</p> <p>(8) If any arithmetical error is found in a bid in examining bids pursuant to this Section, the PPE may correct such an error, and where, in making such correction, there exists a discrepancy between unit rate and total amount, the unit rate shall prevail, and the total amount shall be corrected as per the same rate.</p> <p>(9) Where there is a discrepancy between figures and words in a bid submitted by a bidder, the amount in words shall prevail.</p> <p>(10) Where any error is corrected pursuant to Sub-section (8) or (9), information of such correction shall be communicated to the concerned bidder.</p>
<p><i>Non-processing of Bids</i></p>	<p>37. <u>Bids having following non-compliance shall not be processed:</u></p> <ul style="list-style-type: none"> (a) Where it is not sealed, (b) Where it is not submitted within the time frame prescribed, (c) The bids withdrawn pursuant to Section 32, (d) If it is not in accordance with Sub-section (2) of Section 36, (e) The bids submitted by mutual collusion pursuant to Sub-section (6) of Section 39, (f) The bids cancelled pursuant to Sub-section (7) of Section 36.
<p><i>Evaluation of bids</i></p>	<p>38.(1) All submitted bids other than those separated for non-processing pursuant to Section 37, shall be included for evaluation.</p> <p>(2) Where a bid is found containing minor deviations in the matters such as the technical specifications, descriptions and characteristics etc. so as not to reject the bid, the value of such deviations shall be quantified, to the extent possible, and included in the evaluation of bids pursuant to Sub-section (1).</p> <p>(3) Where the value of minor deviations under Sub-section (2) exceeds fifteen percent of the bid price of the bidder, such a bid shall be deemed to be substantially non-responsive; and shall be excluded from evaluation.</p> <p><u>Explanation:</u> For the purposes of this Section, the words “minor deviations” mean such deviations that do not materially depart from the matters such as the technical specifications and descriptions as set forth in the bidding documents.</p> <p>(4) Where invitation to bid has been made after determination of prequalification, the bids submitted by the bidder other than the pre-qualified bidders shall be excluded from evaluation under Sub-section (1).</p>

	<p>(5) Bids shall be evaluated in accordance with the criteria and methodology set forth in the bidding documents; and in carrying out such evaluation, the bid with the lowest bid price shall be determined by making comparison of the evaluated price of every bid with the evaluated price of the other bids.</p> <p>(6) The qualifications of the bidder of the bid having the lowest bid price under Sub-section (4) shall be verified in order to ascertain whether it conforms to the qualification criteria set forth in the bidding documents or not.</p> <p>(7) Where on examination, the qualification of the bidder of the bid having the lowest bid price pursuant to Sub-section (4) is in conformity with the qualification evaluation criteria set forth in the bidding documents under Sub-section (5), such bid shall be the lowest evaluated substantively responsive bid. Where, on examination, the qualification of such bidder is found not to be in conformity with the qualification as evaluation criteria set forth in the bidding documents, such bid shall be excluded from evaluation; and the qualification of the bidder having the next lowest bid price shall be examined on the same grounds respectively.</p> <p>(8) The TEC shall prepare an evaluation report stating, <i>inter alia</i>, the criteria and methodology of evaluation of the lowest evaluated substantially responsive bid pursuant to Sub-section (6) and submit the report to the PPE.</p>
<p><i>Rejection of bids or cancellation of procurement proceedings</i></p>	<p>39. (1) The PPE may, in the following circumstances, reject all bids or cancel the procurement proceedings:-</p> <ul style="list-style-type: none"> (a) If none of the bids are substantially responsive pursuant to clause (d) of Sub-section (2) of Section 36, (b) If the bid price of the lowest evaluated substantially responsive bid is substantially above the cost estimate, or (c) If requisitioned goods, construction works, consultancy services or other services are no longer required. <p>(2) Notwithstanding anything contained in Sub-section (1), no bid shall be rejected or re-bidding shall be invited only for the reason that only a few bids are or only one bid is substantively responsive.</p> <p>(3) The PPE shall have to communicate to all the bidders a notice along with the reason for the rejection of bids or cancellation of the procurement proceedings pursuant to Sub-section (1).</p> <p>(4) Where any bidder requests for grounds for the rejection of all bids or rejection of the procurement proceedings, the PPE shall have to communicate such information to that bidder.</p> <p>(5) In making re-invitation to bid because of non-submission of any bid in response to an invitation to bid or cancellation of all bids or cancellation of the bid proceedings pursuant to Sub-section (1), the modification shall also be carried out in the bidding documents,</p>

	<p>technical specifications, cost estimate and terms and conditions of procurement contract as per necessity by reviewing the reasons for such rejection of bids or cancellation of the bid proceedings</p> <p>(6) Notwithstanding anything contained elsewhere in this Section, if it is proved that the bidder has submitted bid by collusion among the bidders, such bid shall be rejected.</p>
<p><i>Negotiations and finalisation of Procurement Contract</i></p>	<p>40. (1) A PPE may hold negotiations with the lowest evaluated substantially responsive bidders, provided this is indicated in the initial tender notice or it appears from the tender notice that no one bid is most advantageous and subject to safeguards to ensure that such negotiations do not discriminate between bidders.</p> <p>(2.) The PPE shall select for acceptance only the lowest evaluated substantially responsive bid in accordance with Section 38.</p> <p>(3) Within seven days of the selection of the bid pursuant to Sub-section (2), the PPE shall serve a notice or Letter of Acceptance of his or her bid to the concerned bidder.</p> <p>(4) The concerned bidder shall have to furnish the performance security and sign the procurement contract under Section 63 within the 21 days of the issue of the Letter of Acceptance.</p> <p>(5) If the bidder fails to furnish the performance security and sign the procurement contract within the period under Sub-section (4), the bid security of that bidder shall be forfeited and the bid of the other immediately next lowest evaluated substantially responsive bidder shall be accepted and the procurement contract concluded.</p> <p>(5) If even the bidder under Sub-section (5) fails to furnish the performance security pursuant to Section 34 and sign the procurement contract pursuant to Section 63, the bid of the other immediately next lowest evaluated substantially responsive bidder, respectively, shall be accepted and the procurement contract concluded.</p> <p>(6) If any bidder whose bid has been rejected requests for grounds for the rejection of its bid, the PPE shall have to communicate such information to that bidder.</p>
<p><i>Two-Stage Bidding</i></p>	<p>41.(1) Two-stage bidding may be invited in the following conditions:-</p> <ul style="list-style-type: none"> (a) When it is not feasible to define fully the technical aspects of the goods or construction works or services to be procured or the terms and conditions of the procurement contract at the time of the invitation to bid, or (b) Because of the complex nature of the goods or construction works or services to be procured, it is necessary for the PPE to discuss with the bidders about how to resolve the problems related to various technical aspects or the procurement contract and about such technical aspects and conditions of contract and benefits accruing there from. <p>(2) While inviting the first stage bid pursuant to this Section, the bidding documents shall state the purpose of procurement,</p>

	<p>expected performance, broad specifications and other broad features and the qualification of bidders, and state that bidders shall not be required to quote the price in his/her bid and shall submit only technical proposal and comments on the terms and conditions of the proposed procurement contract.</p> <p>(3) The PPE may hold discussions with any or all bidders in relation to the bids submitted in response to the invitation to bid made pursuant to Sub-section (2).</p> <p>(4) The PPE may, also taking into account the discussions held in pursuance to Sub-section (3), do the following in relation to the bids submitted pursuant to Sub-section (2):</p> <ul style="list-style-type: none"> (a) Canceling a proposal relating to a bid that fails to meet the basic requirements to be met in relation to procurement or fails to make minimum performance or fails to complete the work within the specified period or that cannot be modified to meet such requirements or to make such performance or to complete the work within the specified period or due to any other weakness, (b) Modifying or improving the technical specifications, evaluation criteria and terms and conditions of the procurement contract in order to increase competition, (c) Determining the evaluation system in order to determine the appropriateness of various options submitted by the bidders. <p>(5) After the completion of the acts as referred to in Sub-section (4), the PPE shall make invitation to second stage bid. In making such invitation to bid, the bidders whose bids have not been cancelled pursuant to the said Sub-section shall be invited to submit bids along with price in accordance with revised bidding documents.</p> <p>(6) The second-stage bidding proceedings to be carried out pursuant to Sub-section (5) shall be carried out pursuant to the provisions contained in this Chapter except for those provided for in this Section.</p>
<p><i>Framework contracts</i></p>	<p>42. (1) The CPMU shall conclude framework contracts with validity period of one year with the suppliers for goods and services of standard types which are identified as common user goods/services as prescribed.</p> <p>(2.) The goods/services within the purview of CPMU and PPEs shall be prescribed. The items which are not within the purview of PPEs shall fall within the purview of CPMU.</p> <p>(3.) A PPE not having requisite procurement expertise may place indent on the CPMU as prescribed.</p> <p>(4.) The indents on the CPMU shall be placed as soon as the allotment of funds is received by PPEs.</p> <p>(5.) The PPEs shall place the indents of their annual requirements</p>

	<p>of common user goods/services on CPMU and initiate procurement proceedings for other goods/works/services at their own level as prescribed.</p> <p>(6.) The CPMU shall endeavor to keep every good/service within its purview on framework contract. If it is not possible to finalise the fresh framework contract before the expiry of existing framework contract, the existing framework contract can be extended for a period upto 3 months provided that the price trend is not declining.</p> <p>(7.) The CPMU shall issue Non-Availability Certificate (NAC) to the PPEs if the CPMU has not finalized framework contract for the goods/services and the previous framework contract has not been extended. The powers for issue of NAC shall be as prescribed.</p> <p>(8.) The local industrial enterprises can be granted parallel rate contract by CPMU/PPEs. The conditions for the grant of parallel rate contract shall be prescribed.</p> <p>(9.) The provisions of this Act shall also be applicable for the processing of procurement under framework contract. However, special conditions applicable to finalization of frameworks contracts such as Bid Security, Price Fall Clause etc. shall be prescribed.</p>
	CHAPTER- VII
	PROVISIONS RELATING TO SERVICES
<p><i>Procurement of Consultancy Services</i></p>	<p>43. (1) A PPE may procure consultancy services from any person, firm, organization or company in the following conditions:-</p> <p>(a) If any consultancy work cannot be performed by the human resource available at the concerned PPE, or</p> <p>(b) If a service is required to be obtained from a consultant under the foreign aid source in accordance with an agreement with a donor party.</p> <p>(2) In procuring the consultancy services under Sub-section (1), procurement shall be made by fulfilling the procedures referred to in this Act.</p>
<p><i>Expression of Interest and short listing</i></p>	<p>44. (1) Where it is required to procure consultancy service that costs more than the prescribed threshold, the PPE, in order to solicit expression of interest from the persons, firms, organizations or companies that are interested in providing such consultancy services shall publish a notice in one regional newspaper and one newspaper of national circulation, giving a period of at least twenty five days, setting out the matters as prescribed.</p> <p>(2) The notice under Sub-section (1) shall be placed in the website of the concerned PPE or of the CPMU.</p>

	<p>(3) International level expression of interest shall have to be invited in the following circumstances:-</p> <ul style="list-style-type: none"> (a) To procure consultancy service, the cost of which exceeds the prescribed threshold, (b) If the consultancy service as requisitioned by the PPE is not available under competitive price from more than one consultant within India, (c) If no proposal has been submitted in response to invitation to national level proposal for the procurement of consultancy service, and the service has to be procured from any foreign consultant, (d) If it is necessary to obtain services from a consultant under the foreign aid source by soliciting international expression of interest in accordance with an agreement with the Donor Agency. <p>(4) While soliciting expression of interest under Sub-section (3), notice shall have to be published in English language.</p> <p>(5) The PPE shall, upon evaluation, <i>inter alia</i>, of the qualification, experience and capacity of the intending proponents the expression of interest pursuant to Sub-section (1) or (3), make selection of generally three to six intending proponents who can provide such consultancy service and prepare a short list as prescribed.</p> <p>(6) Where it is required to procure consultancy service the cost of which is less than the prescribed threshold, the PPE may prepare a list of the persons, firms, organizations or companies that can provide such service by fulfilling the procedures as prescribed and shall solicit proposals pursuant to Section 45 from the persons, firms, organizations or companies that have been included in that list, by fulfilling the procedures as prescribed.</p>
<p><i>Soliciting proposals for services</i></p>	<p>45. (1) After a short list has been prepared pursuant to Section 44, the PPE shall request for proposals from intending proponents, by giving a period of at least forty days, sending the documents relating to proposal, as prescribed to the intending proponents who are short listed.</p> <p>(2) The documents relating to proposal under in Sub-section (1) shall contain the following matters:-</p> <ul style="list-style-type: none"> (a) The name and address of the PPE, (b) The nature of the services to be procured, the time and place when and where the services are to be provided, the terms of reference of the services, the task to be completed and expected outputs, (c) Instructions to proponent to prepare proposal, (d) Instructions that the technical and the financial proposals have to be sealed in separate envelopes,

	<p>each of which has to clearly indicate the type of proposal outside it and that both envelopes have then to be sealed in a separate envelope and that the required services have to be mentioned thereon,</p> <ul style="list-style-type: none"> (e) Technical and financial evaluation weightage, (f) The criteria and weightage marks for the evaluation and comparison of proposals, (g) Conditions of the procurement contract, (h) The place, date and time for the submission of proposals, (i) Method for the selection of proposals, (j) Statement that proposals shall not be processed in the event of conflict of interest and information relating to legal action if fraud or corruption is committed, (k) Provision that a proponent may make an application for review, against any error or decision made by the PPE in carrying out proposal proceedings, and (l) Other matters as prescribed. <p>(3) In setting forth in the documents relating to proposals under Sub-section (1), the criteria for the evaluation of proposal pursuant to clause (f) of Sub-section (2), any or all of the following criteria shall be set forth as required for the evaluation of technical proposal:-</p> <ul style="list-style-type: none"> (a) Experience of consultants in the task to be performed by consultants, (b) The quality of proposed methodology for the performance of task by the consultants, (c) The qualifications of the proposed key human resource, (d) Provision of knowledge and technology transfer, (e) In the case of international level proposals, the details of key Indian human resource proposed for the performance of task. <p>(4) In setting forth in the documents relating to proposals under Sub-section (1), the method for the selection of proposal pursuant to clause (i) of Sub-section (2), there shall be set forth which of the following methods shall be used for the selection of proposals:-</p> <ul style="list-style-type: none"> (a) Quality and Cost Based Selection, (b) Combined Quality-Cum-Cost Based System, (c) Quality based selection, or (d) Cost Based Selections. <p>5) Notwithstanding anything contained in Sub-section (4), where the nature of the consultancy services to be procured is exceptionally complex or such services are likely to have considerable impact on future projects or national economy, the selection of proposals may be made exclusively on the</p>
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	basis of the quality method, as prescribed.
<i>Opening of Proposals</i>	<p>46. (1) After the expiry of the deadline for the submission of proposals, the POC constituted pursuant to Section 7(1) shall open outer envelope of the proposals received from the proponents in public and the sealed envelopes of technical and financial proposal shall be separated.</p> <p>(2) Out of the envelopes separated pursuant to Sub-section (1), the POC shall open the technical proposals, and the envelopes of financial proposals shall be kept safely apart unopened.</p> <p>(3) Other provisions relating to the opening of technical proposals shall be as prescribed.</p>
<i>Evaluation of Technical Proposal:</i>	47. (1.) The technical proposal shall be evaluated by the PEC constituted pursuant to Section 8(1) in accordance with the evaluation criteria as prescribed in the documents relating to proposal.
<i>Opening of Financial Proposal:</i>	48. (1.) The financial proposals of only those proponents who have been qualified from the evaluation of technical proposals shall be opened by PEC in public as prescribed.
<i>Evaluation of Financial Proposal</i>	<p>49. (1.) The financial proposal opened pursuant to Section 48 shall be evaluated by the PEC as provided hereunder:-</p> <p>(a) Where quality and cost method is applied to select the proposal, the technical and financial proposals shall be evaluated in a combined form and the proposal of the proponent who obtains the highest marks in such evaluation shall have to be selected as prescribed.</p> <p>(b) Where quality method is applied to select proposal, only the proposal of the proponent obtaining the highest marks in the technical proposal shall have to be selected.</p> <p>(c) Where fixed budget method is applied to select proposal, a proposal having cost above such budget ceiling shall be rejected and the proposal of the proponent who obtains the highest technical marks after falling within such budget ceiling shall have to be selected.</p> <p>(d) Where least cost method is applied to select proposal, the proposal of a proponent having the lowest cost out of the proponents having obtained minimum marks prescribed for being successful in the technical proposal shall have to be selected.</p>
<i>Rejection of Proposal and Cancellation of Procurement Proceedings:</i>	<p>50. (1) The PPE may reject all proposals or cancel the procurement proceedings in the following conditions:-</p> <p>(a) If all the received proposals are not substantially responsive to the terms of reference,</p> <p>(b) If the cost offered by the selected proponent is</p>

	<p>substantially more than the cost estimate and available budget,</p> <p>(c) If the consultancy service is no longer required or,</p> <p>(d) If it is proved that the proponents have submitted the proposal by mutual collusions.</p> <p>Provided that the proposal of those proponents who have not colluded may be processed.</p>
<p><i>Negotiations for procurement of Services</i></p>	<p>51.(1) Negotiations with the proponent selected pursuant to Section 49 may be held in the matter of terms of reference and scope of the proposed services, progress report and facility to be made available by the PPE.</p> <p>(2) Except in the conditions under clause (b) of Sub-section (1) of Section 49, negotiations in relation to the financial proposal cannot be held with respect to the remuneration of professional experts.</p> <p>Provided that negotiations may be held with respect to the reimbursable expenditure.</p> <p>(3) If an agreement acceptable to both the PPE and the proponent could not be reached from the negotiations held pursuant to this Section, the PPE shall have to negotiate in the case of the proposal under clause (a) (b) and (c) of Sub-section (1) of Section 49, with the proponent having obtained the next highest marks and in the case of the proposal under clause (d), with the proponent having the next lowest cost, respectively.</p>
<p><i>Procurement Contract and Terms and Conditions thereof</i></p>	<p>52. (1) The proposal of the proponent who has reached the agreement from the negotiations pursuant to Section 51 shall be selected for acceptance.</p> <p>(2) Within seven days of selection of proposal pursuant to Sub-section (1), the PPE shall have to serve a notice or the Letter of Acceptance to the proponent so selected.</p> <p>(3) If no proponent has filed any application for review pursuant to Section 73, the proposal of the proponent selected pursuant to Sub-section (1) shall be accepted and s/he shall be served a notice by giving a period of 21 days to come to sign the contract.</p> <p>(4) If the proponent attends within the period under Sub-section (1) to conclude contract, s/he shall have to sign contract under Section 63, and if s/he does not attend, the PPE shall hold negotiations, respectively, pursuant to Section 51 with the proponent having obtained next higher marks in the case of a proponent under clause (a), (b), and (c) of Sub-section (1) of Section 49 and with the next proponent having the lowest cost in the case of clause (d)</p>

	and conclude contract with such proponent pursuant to Section 63.
<i>Procurement of Consultancy Services by other methods</i>	53. Other methods concerning procurement of consultancy service and evaluation process thereof shall be as prescribed.
	CHAPTER-VIII
	OTHER PROVISIONS RELATING TO PROCUREMENT
<i>Procurement through selective/ limited tender procedures</i>	54. (1) Selective tender procedure shall be adopted when estimated value of the procurement is below the pecuniary limit as prescribed. (2) Limited tender procedure shall be adopted in case of articles of proprietary nature, which are available from single source. (3.) The procedure to be followed for procurement procedures under sub-section (1) & (2) shall be as prescribed.
<i>Procurement through Purchase Committees or without inviting quotations</i>	55. (1.) The PPEs may make procurement on the recommendations of a duly constituted Local Purchase Committee as prescribed. (2.) Small procurements as prescribed may be made without obtaining quotations. (3.) The monetary limits for procurements under sub-section (1) & (2) at each occasion may be prescribed.
<i>Provision relating to procurement of other services</i>	56. Notwithstanding anything contained elsewhere in this Act, the PPE may take house or land on rent or obtain the prescribed services on contract in compliance with the prescribed procedure.
<i>Community and end-user participation</i>	57. When the participation of the procurement end user or beneficiary community may result in enhancing the economy, quality or sustainability of the service to be procured or the very objective of the project is to create employment and involvement of the beneficiary community, such end-user or community may participate in the delivery of services under procedures as prescribed.
<i>Provisions relating to concession contracts</i>	58. (1) A PPE may enter into a concession contract with a person for the procurement of works and services through a Build, Own, Operate (BOO), Build, Operate, Transfer (BOT), Build, Own, Operate, Transfer (BOOT) or any other model as prescribed. (2) The structure of the model and nature of participation of the PPE may be prescribed.
<i>Buy Back Offer</i>	59. (1) The PPEs may trade the existing old goods while

	<p>purchasing the new ones.</p> <p>(2) The procedure to be followed while offering buy back offer may be prescribed.</p>
<i>Turnkey Contract</i>	<p>60. (1) The PPEs may enter into turnkey contract which is a mix of goods contract and works contract.</p> <p>(2) The procedure to be followed for entry into turnkey contract may be prescribed.</p>
<i>Maintenance Contract</i>	<p>61.(1) Some goods, especially sophisticated equipment and machinery need proper maintenance for trouble free service.</p> <p>(2) The PPEs may enter into annual maintenance contract either with the manufacturer/supplier of the goods or with a competent and eligible firm, not necessarily the manufacturer/supplier of the goods in question and the procedure for the same may be prescribed.</p>
<i>Disposal of Surplus Goods</i>	<p>62. (1.) The PPEs should dispose off such surplus goods at the earliest, to avoid unnecessary inventory carrying costs, decrease in resale price of those goods etc.</p> <p>(2.) Instructions for disposal of surplus goods may be prescribed.</p>
	CHAPTER IX
	CONTRACT IMPLEMENTATION
<i>Contents of procurement contract</i>	<p>63. (1) In making procurement other than of low-value procurement, the PPE shall conclude a procurement contract in accordance with this Chapter.</p> <p>(2) The procurement contract under Sub-section (1) shall include the set of conditions which are attached to the bidding documents or request for proposals. The conditions shall include, inter alia, the following information:</p> <ul style="list-style-type: none"> (a) the names, addresses, Telephone/fax numbers, contact persons of the parties to the contract; (b) the scope of the procurement contract; (c) order of priority of contract documents; (d) contract price or its mode of determination; (e) conditions of acceptance; (f) conditions and mode of payment; (g) force majeure; (h) price adjustment; (i) provisions regarding contract termination; (j) fair claim settlement and dispute resolution mechanism; and (k) applicable law
<i>Entry into force of the procurement contract</i>	<p>64. A procurement contract shall come into force:</p> <p>(a) In case of low value contracts, no formal signing of a contract is required and it shall come into force from the date the notice of the acceptance of the bid or purchase order has been given to the bidder whose bid has been accepted.</p>

	<p>(b) In all other cases of procurement, a written contract will be signed applicable from the date on which the signatures of both the PPE and the successful bidder are affixed to it.</p> <p>Provided that after signing of the procurement contract, where the coming into force of it is contingent upon fulfillment of certain conditions, the contract shall take effect from the date from which such fulfillment takes place.</p>
<i>Contract amendments</i>	<p>65. Unless otherwise provide for in procurement contract, a procurement contract may be amended by written consent of both the parties subject to non-alteration of the basic nature or scope of the work.</p> <p>Provided that procurement contract need not be amended in issuing a variation order pursuant to Section 66 or making price adjustment pursuant to Section 67.</p>
<i>Variation Order</i>	<p>66.(1) Unless otherwise provided for in the procurement contract, if the circumstances that could not be foreseen at the time of signing of procurement contract, arise in the course of implementation of the procurement contract, the competent authority may, by stating clear reasons thereof, issue as prescribed, a variation order for a variation of up to ten percent.</p> <p>(2) The variation order under Sub-section (1) shall be issued in the following manner:-</p> <ul style="list-style-type: none"> (a) To be so issued as not to change the basic nature or scope of the concerned work, (b) Arrangements for budget has been made and, (c) Approval of the competent authority must have been obtained. <p>(3) Other provisions concerning the issuance of variation order shall be as prescribed.</p>
<i>Price Adjustment in Procurement Contract</i>	<p>67. (1) Unless otherwise provided in procurement contract, if price needs to be adjusted in the course of implementation of a procurement contract having duration exceeding fifteen months the competent authority may adjust price.</p> <p>Provided that where a procurement contract has been concluded to procure goods, works and services following the invitation of open bidding and the price of any raw material is increased or decreased unexpectedly by more than ten percent of the previous price, price shall be adjusted as prescribed.</p> <p>(2) Notwithstanding anything contained in Sub-section (1), price adjustment cannot be made where the goods, works or services under the contract are not supplied within the period prescribed in such contract and has taken more time due to the delay by the person who has obtained procurement contract or if procurement</p>

	contract is concluded on the basis of lump sum contract or fixed budget.
<i>Payment of Bill or Invoice</i>	68. Subject to the procurement contract, the PPE shall have to make payment of the bill/invoice as prescribed
<i>Mechanism for dispute settlement:</i>	69. (1) A procurement contract shall provide the mechanism for resolution of disputes arising between the parties to the contract. (2) The parties to the contract shall use their best efforts to settle amicably all disputes arising out of or in connection with the Contract or its interpretation. (3) In relation to the supply of goods, works and services, the procurement contract may provide that any dispute between parties to contract will be resolved through arbitration in accordance with the procedure provided for, if any, in the procurement contract and if not provided for, in accordance with the Indian Arbitration and Re-conciliation Act, 1996(Act No. 26 of 1996.)
<i>Provision Concerning Extension of Contract Period</i>	70.(1) Provisions concerning the extension of period of procurement contract shall be as provided in the concerned procurement contract. (2) Notwithstanding anything contained in Sub-section (1), if the period of procurement contract is to be inevitably extended due to <i>force majeure</i> , failure of the PPE to make available the materials to be made available by it or other reasonable causes, the Competent Authority may extend the period on the prescribed grounds upon submission of application by the person obtaining procurement contract.
<i>Termination of Procurement Contract and remedy therefor</i>	71. (1) The procurement contract shall have to specify the grounds in which such contract may be terminated. (2) The main grounds under Sub-section (1) may be the following:- (a) The PPE may terminate procurement contract if the supplier, consultant, service provider or construction entrepreneur breaches the procurement contract, (b) On the grounds of convenience for public interest, (c) A supplier, consultant, service provider or construction entrepreneur may terminate the procurement contract, and (d) The procurement contract may be terminated for <i>force majeure</i> . (3) A procurement contract shall include along with the following matters the provision of financial settlement and compensation to be made in the event of termination of the procurement contract:-

	<p>(a) If payment is remaining to be made for the value of work, supply or service that has already been satisfactorily completed, payment thereof,</p> <p>(b) Liability to be borne by a defaulting supplier, consultant, service provider or construction entrepreneur for the increased cost to be incurred by the PPE to carryout or cause to be carried out the work under the procurement contract,</p> <p>(c) Amount of the actual loss sustained by the supplier or consultant or service provider or construction entrepreneur due to the termination of procurement contract by the PPE without any default on his/her part.</p> <p>(4) Unless otherwise provided in the procurement contract, for public interest, the PPE may terminate a procurement contract on the grounds of convenience.</p> <p>(5) Where a procurement contract has been terminated pursuant to Sub-section (4), the PPE shall have to pay the value for the following work that has been completed prior to the termination of the said contract :-</p> <p>(a) Payment due under clause (a) of Sub-section (2),</p> <p>(b) Where expenditure is to be paid on reimbursement basis, such expenditure as actually incurred,</p> <p>(c) The price of the goods specially manufactured for the PPE under the procurement contract,</p> <p>(d) Excluding the lost profit and the amount under clause (c) of Sub-section (3), the expenditure incurred for termination of the procurement contract, and</p> <p>(e) Other expenditure as prescribed.</p>
<i>Public Notice of Procurement Contract</i>	72. After a procurement contract has been concluded pursuant to this chapter, the PPE shall have to publish the same in the website of PPE as prescribed.
	CHAPTER-X
	REVIEW
<i>Right to Review</i>	<p>73. (1)An applicant or bidder who claims to have suffered or who is likely to suffer, loss or injury due to a breach of a duty imposed on the PPE under this Act and the rules issued pursuant thereto, may seek review in accordance with this chapter.</p> <p>(2.) An application for review shall not be entertained unless it is accompanied by the non-refundable fee and Security deposit as may be prescribed and identifies the specific act or omission.</p>

<p><i>Review by Head of PPE</i></p>	<p>74. (1) Prior to the entry into force of a procurement contract, application for review shall be made in writing, to the Head of the PPE.</p> <p>(2.) The application under Sub-section (1) shall have to be filed within seven days from the date of the bidder or proponent having become aware of that the PPE has made an error or has dishonored the duty relating to the procurement proceedings and should be accompanied with non-refundable fee and security deposit as prescribed.</p> <p>(3.) In the application under Sub-section (1), the applicant shall have to state clearly the commission or omission of an act by the PPE that led to such error or breach of duty and the provision of this Act or Rules or guidelines made there under that have been contravened by such decision.</p> <p>(5) The Head of PPE shall decide the application within 15 days of receipt of complete application.</p> <p>(6.) In cases where an application is dismissed, security deposit shall be forfeited.</p>
<p><i>Review by Govt.</i></p>	<p>75. (1) If the Head of the PPE does not issue a decision within the prescribed time limit or if the complainant is not satisfied with the decision of the Head of the PPE, s/he may apply to the Govt. for 2nd review.</p> <p>(2.) The application under Sub-section (1) shall have to be filed within seven days from the date of decision by the Head of PPE or 21 days after the filing of application under section 74 where the decision has not been taken by the Head of PPE.</p> <p>(3.) In the application under Sub-section (1), the applicant shall have to state clearly the commission or omission of an act by the PPE that led to such error or breach of duty and the provision of this Act or Rules or guidelines made thereunder that have been contravened by such decision.</p> <p>(4) An application for review received after the expiry of the period under Sub-section (2) or not accompanied by the non-refundable fee and security deposit as prescribed.</p> <p>(5) Within seven days of the receipt of application pursuant to Sub-section (1), the Govt. shall notify, by transmitting a copy of such application and document attached to such application, if any, to the concerned PPE to provide the information about the action taken in that respect and comments thereon.</p> <p>(6) Within seven days of the receipt of notice pursuant to Sub-section (5), the PPE shall have to provide to the Govt. information and comments related thereto.</p> <p>(7) The Govt. shall have to make decision within thirty days of receipt of the application pursuant to Sub-section (1) on the basis of the information and comments received pursuant to Sub-section (6), the evidence submitted by the applicant alongwith the</p>

	application and if necessary, by hearing both the parties. (8.) In cases where an application is dismissed security deposit shall be forfeited.
	CHAPTER XI
	USE OF ELECTRONIC PROCESSING SYSTEM IN THE PUBLIC PROCUREMENT ETC.
<i>E-Government Procurement</i>	76. (1) Notwithstanding anything contained in this Act, Government for efficient delivery of services to the public, may by publication of a notice in the official Gazette, provide a mechanism for inviting a proposal for pre-qualification, EOI and RFP for services through the electronic means as provided under the Information Technology Act, 2000 as amended in the year 2008.
	CHAPTER XII
	MISC. PROVISIONS
<i>Immunity for action taken in good faith:</i>	77. No suit or other legal proceeding shall lie against the Government or any officer of authority empowered to exercise powers or perform the functions under this Act in respect of anything which is in good faith done or intended to be done under this Act.
<i>Power to make rules:</i>	78. The Government may, by notification in the official Gazette, make rules outlining detailed procedures, competent authorities, financial authorities, thresholds and so forth to fulfil the objectives and to carry out the provisions of this Act.
<i>Powers to remove difficulties</i>	79. For the purpose of removing any complications in giving effect to any provisions of this Act on account of any ambiguities occurring in such provision, the Government may, by notification published in the Official Gazette, issue a direction clarifying or interpreting such provision in keeping with other provisions, as to how such matters shall be dealt with.
<i>Repeal and saving.</i>	80. (1) All rules, regulations, orders, notifications, departmental codes, manuals, bye- laws, Official Memoranda , circulars or any other order made or issued before the commencement of this Act and in force on the date of such commencement providing for or relating to any of the above matters for the furtherance of which this Act is enacted shall continue to be in force and effective as if they are made under the corresponding provisions of this Act, to the extent they are not inconsistent with the provisions of the Act and unless and until superseded by anything done or any action taken or any rule, notification or order, is made under this Act. (2) All proceedings for public procurement entered into before the commencement of this Act in accordance with the existing rules, regulations and guidelines shall be disposed off in accordance with the provisions of repealed laws as if they have not been repealed.

