श्रेय- उच्च-बाहुल्यता-(भ-2)/2018/ 3127-33
दस्तावेज़ सरकार
किले विभाग
(कर्मठयोग्योता हेतु संयोजित एवं अन्तःसंबन्धी)
(लेखपाली विभाग, जनता रोड 20, पश्चिम विभाग लखीमपुरा, पंजाब)

1. तदनुसार, प्रतीयोगी हेतु बिलकुल विभिन्न रूपों की तहसील हेतु विक्रय, रस्म.
2. तदनुसार, सिक का समन्वय बिलकुल विभिन्न रूपों की तहसील हेतु विक्रय, रस्म.
3. तदनुसार, फ्लीजिंग विभिन्न रूपों की तहसील हेतु विक्रय, रस्म.
4. तदनुसार, उक्त रूपों की तहसील हेतु विक्रय, रस्म.
5. तदनुसार, फ्लीजिंग विभिन्न रूपों की तहसील हेतु विक्रय, रस्म.
6. समन्वय, तदनुसार, विभिन्न रूपों की तहसील हेतु विक्रय, रस्म.
7. तदनुसार, बाहुल्यता विभाग, भी.बी.के.सी.वी. विभाग, पंजाब.

Date: 9/10/18

किले विभाग
14/11/18

खिलेजी


मुख्य सचिव / भूमिकाओं नी,

किले विभाग के साथ निर्माण प्रक्रम सत्यी Public Procurement Process
विभाग प्रणाली से निर्माण प्रक्रम सत्यी
Transparency in Public Procurement Act – 2018 या
किले विभाग के साथ निर्माण प्रक्रम सत्यी
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विशेषज्ञ विभाग
14/11/18

लेखपाली विभाग
31/10/18

लेखपाली विभाग के हेतु हेतु से लेखापाली विभाग से संबंधित विभाग

1. तदनुसार, विभिन्न रूपों की तहसील हेतु विक्रय, रस्म.
2. तदनुसार, विभिन्न रूपों की तहसील हेतु विक्रय, रस्म.

Date: 9/10/18

email

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11/10/18
THE PUNJAB
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ACT, 2018
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Chapter 1 Preliminary

1.1 Short title, extent and commencement
(i) This Act may be called the Punjab Transparency in Public Procurement Act, 2017
(ii) It shall extend to the whole of the State of Punjab.
(iii) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint:
Provided that different dates may be appointed for different provisions of this Act and any reference to any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

1.2 Definitions
In this Act, unless the context otherwise requires:
(i) "bid" means a formal offer made in pursuance of an invitation by a procuring entity and includes any tender, proposal or quotation;
(ii) "bidder" means any person participating in a procurement process with a procuring entity;
(iii) "bidding document" means the documents issued by a procuring entity, including any amendments thereto, that set out the terms and conditions of registration procedures and includes the invitation to register;
(iv) "bidding document" means documents issued by the procuring entity, including any amendments thereto, that set out the terms and conditions of the given procurement and includes the invitation to bid;
(v) "bid security" means a security provided to the procuring entity by a bidder for securing the fulfilment of any obligation in terms of the provisions of the bidding documents;
(vi) "electronic reverse auction" means an online real-time purchasing technique utilised by the procuring entity to select the successful submission, which involves presentation by bidders of successively lowered bids during a scheduled period of time and the automatic evaluation of bids;
(vii) "goods" includes all articles, material, commodities, electricity, livestock, furniture, fixtures, raw material, spare parts, instruments, software, machinery, equipment, industrial plants, vehicles, aircraft, ships, railway rolling stock and any other category of goods, whether in solid, liquid, or gaseous or intangible form, purchased or otherwise acquired for the use of a procuring entity as well as services or works incidental to the supply of the goods if the value of services or works or both does not exceed that of the goods themselves;
(viii) "invitation to bid" means a document published by the procuring entity inviting bids relating to the subject matter of procurement and any amendment thereto and includes notice inviting tender and request for proposal;
(ix) "notification" means a notification published in the Official Gazette;
(x) "prescribed" means prescribed by rules made under this Act;
(xi) "pre-qualification" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified;
b) any State Public Sector Enterprise owned or controlled by the State Government;

c) anybody established or constituted by the Constitution whose expenditure is met from the Consolidated Fund of the State;

d) anybody or board or corporation or authority or society or trust or autonomous body (by whatever name called) established or constituted by an Act of the State Legislature or a body owned or controlled by the State Government;

e) any other entity which the State Government may, by notification, specify to be a procuring entity for the purpose of this Act, being an entity that receives substantial financial assistance from the State Government in so far as the utilisation of such assistance towards procurement is concerned.

(2) Notwithstanding anything contained in sub-section (1), provisions of this Act shall not apply to a procuring entity subject to any obligation of the State Government under or arising out of any agreement:

a) entered into by the Central Government with any other country or with an intergovernmental international financing institution;

b) to which it is party with one or more other State Governments or with the Central Government, and the requirements of such agreement shall prevail over the provisions of this Act.

1-4 Exceptions

The provisions of sections 2.1 and 2.3 of Chapter II shall not apply to Procurement of goods and services:

(1) during the period of national calamity or public emergency declared by the Government of Punjab;

(2) where the goods or services are available from a single source or where a particular supplier or contractor has exclusive rights with respect to the goods or services or construction work and no reasonable alternative or substitution exists.

For the purpose of this clause, there shall be a committee of three experts containing one technical representative of the procuring entity, one technical representative of the government organisation dealing with similar procurements, and one representative from a reputed academic or research institution or non-commercial institution having expertise in such line to examine and declare that the goods or services are available from a single source.

(3) where the procuring entity having procured goods, services or technology from a supplier or contractor determines that additional supplies must be procured from the same supplier or contractor for reasons of standardisation and compatibility with the existing goods, service or technology;

(a) wherein the goods or services are procured from certain departments of the Government, public sector undertakings, statutory boards and such other institutions specified by the government and such goods are manufactured or services are provided by them, for a period not exceeding two years from the date of commencement of this Act;

(b) subject to such rules as may be made in this behalf consistent with the provisions of sections 2.1 and 2.3, shall not apply to any procurement the estimated cost of which is less than [two lakh rupees] or such higher value as the State Government may, by notification, specify;

(6) where the procurement is by certain Government Departments, State Government Undertakings, or any Board, body or Corporation established by or under any law and owned or controlled by the State Government or Zilla Panchayats)

a) in case of construction works of all types the value of which does not exceed rupees five lakhs;

b) in case of goods or services other than construction works the value of which does not exceed rupees one lakh.
Chapter 2  General principles of public procurement

2.1 Fundamental principles

(i) In relation to a public procurement, the procuring entity shall have the responsibility and accountability to:

a) ensure efficiency, economy and transparency;

b) provide fair and equitable treatment to bidders;

c) promote competition; and

d) put in place mechanisms to prevent corrupt practices.

(ii) Subject to the provisions of sub-section (3) of section 1.3, every procuring entity shall carry out its procurement in accordance with the provisions of this Act and the rules and guidelines made thereunder;

2.2 Documentary record of procurement proceedings and communications

(i) The procuring entity shall maintain a record of its procurement proceedings which shall include the following:

a) documents pertaining to determination of need for procurement under sub-section 1.1;

b) description of the subject matter of the procurement under section 5.1;

c) statement of the reason for choice of a procurement method other than open competitive bidding under sub-section (4) of section 7.4;

d) particulars of the participating bidders;

e) requests for clarifications and any responses thereto including during pre-bid conferences;

f) bid prices and other financial terms;

g) summary of the evaluation of bids;

h) details of any appeal under section 11.3 and the related decisions;

i) any other information or record as may be prescribed in Rules.

(ii) Any document, notification, decision or other information generated in the course of a procurement, including in connection with appeals under section 11.1 or in the course of a meeting, or forming part of the record of the procurement process, shall be in a form that provides a record of the date of the information and is accessible so as to be usable for subsequent reference;

(iii) Subject to the provisions of the Right to Information Act, 2005 (Central Act No. 22 of 2005) or of any other law for the time being in force relating to retention of records, the procuring entity shall retain the documentary record indicated in sub-sections (1) and (2), for a reasonable period as may be defined in Rules and after the expiry of the procurement process or procurement contract, as the case may be, so as to enable audit or such other review.

2.3 Code of integrity for procuring entity and bidders

(i) No officer or employee of a procuring entity or a person participating in a procurement process thereat in contravention of the code of integrity prescribed by the State Government;

(ii) The code of integrity referred to sub-section (i) shall include provisions for

a) prohibiting:

(i) any offer, solicitation or acceptance of any favour, bene, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process or the action of another party;

(ii) any omission, including a misrepresentation that misleads or attempts to mislead so as to obtain a financial or other benefit or avoid an obligation;
(ii) any collusion, bid rigging or anti-competitive behaviour to impair the transparency, fairness and progress of the procurement process;

(iv) improper use of information shared between the procuring entity and the bidders with an intent to gain unfair advantage in the procurement process or for personal gain;

(v) any financial or business transactions between the bidder and any officer or employee of the procuring entity;

(vi) any coercion including impairing or harming or threatening to do the same, directly or indirectly, to any party or to its property to influence the procurement process;

(vii) any obstruction of any investigation or audit of a procurement process.

b) timely disclosure by the bidder of any previous (transparency) with any entity in India or any other country during the last three years or of any debarment by any other procuring entity.

(5) Without prejudice to the provisions of Chapter 2, in case of any breach of the code of integrity by a bidder or prospective bidder, as the case may be, the procuring entity may take appropriate measures including:

a) exclusion of the bidder from the procurement process;

b) calling off of pre-contract negotiations and forfeiture or encashment of bid security;

c) forfeiture or encashment of any other security or bond relating to the procurement;

d) recovery of payments made by the procuring entity along with interest (The interest rate shall be average of (10 yr G-sec yield) for half-year);

e) cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;

f) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding three years under section 12.6.

Chapter 3 Procurement planning

3.1 Determination of need for procurement

(f) In every case of a procurement made under this Act, the procuring entity shall first determine the need for the subject matter of procurement;

(a) While assessing the need under sub-section (1), the procuring entity shall take into account the estimated cost of the procurement and also decide on the following matters:

a) the scope or quantity of procurement, if determined;

b) the method of procurement to be followed with justification thereof;

c) need for pre-qualification, if any;

d) limitation on participation of bidders in terms of section 5.2, if applicable, and justification thereof; and

e) any other matter as may be prescribed in Rules.

3.2 Annual procurement plan

(1) The procuring entity in line with the clause (a) of section 3.1 shall prepare annual procurement plan at the beginning financial year;

(a) A procuring entity shall prepare its annual procurement plan in a rational manner and in particular shall:
a) avoid emergency procurement wherever possible;
b) aggregate its requirements wherever possible, both within the procuring entity and between procuring entities, to obtain value for money and reduce procurement costs;
c) avoid splitting of procurement to defeat the use of appropriate procurement methods unless such splitting is to enable wider participation of local consultants, suppliers or contractors in which case the authority shall determine such an undertaking and integrate its procurement budget with its expenditure programme.

(a) The annual procurement plan shall be approved by an appropriate budget approves authority;
(b) The procuring entity shall observe the approved annual procurement plan and any unplanned procurement shall get a prior written approval of the accounting officer;
(c) The format of the Annual Procurement Plan shall be defined in the guidelines issued under this Act.

Chapter 4 Pre-tendering

4.1 Obligations related to value of procurement

(1) Every procuring entity shall obtain the approval of the authority which has the necessary financial powers before initiating a procurement process;
(2) A procuring entity shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid its obligations under sub-section (1) or to limit competition among bidders or otherwise avoid its obligations under this Act.

Provided that in the interest of efficiency, economy and timely completion or supply, a procuring entity may, for reasons to be recorded in writing, divide its procurement into appropriate packages.

4.2 Time frame for processing

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

Chapter 5 Tendering

5.1 Description of the subject matter of procurement

(a) The description of the subject matter of procurement shall be set out in the pre-qualification documents, bidder registration documents and the bidding documents and shall:
    a) be such as to meet the essential needs of the procuring entity;
    b) to the extent practicable:
        (i) be objective, functional, generic and measurable;
        (ii) set out the relevant technical, quality and performance characteristics;
        (iii) not indicate a requirement for a particular trade mark, trade name or brand;
    c) Where applicable, the technical specifications shall, to the extent practicable, be based on national technical regulations or recognised national standards or building codes, wherever such standards exist or in their absence, relevant international standards may be used.
5.2 Participation of bidders

(i) The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or among bidders or against any category thereof, except when authorized or required to do so by this Act or the rules or guidelines made thereunder or by the provisions of any other law for the time being in force;

(ii) The State Government may, by notification in this behalf, provide for mandatory procurement of any subject matter of procurement from any category of bidders, and purchase or price preference in procurement from any category of bidders, on the following grounds:

a) the promotion of domestic industry;

b) socio-economic policy of the Central Government or the State Government;

c) any other consideration in public interest in furtherance of the duly notified policy of the Central Government or the State Government;

Provided that any such notification shall contain a reasoned justification for such mandatory or preferential procurement, the category of suppliers chosen and the nature of preference provided.

(iii) The procuring entity, when inviting the participation of bidders in the procurement process, shall declare whether participation of bidders is limited pursuant to this section and on what ground and any such declaration may not ordinarily be later altered.

(iv) Nothing in this section shall be construed as preventing the State Government or any procuring entity from imposing or enforcing measures limiting participation on account of the need

a) to protect public order, security or safety;

b) to protect human, animal or plant life or their health;

c) to protect intellectual property;

d) to protect the essential seaward and strategic interest of India;

5.3 Qualifications of bidders

(i) A procuring entity may determine and apply one or more of the requirements specified in subsection (2) for a bidder to be qualified for participating in a procurement process.

(ii) Any bidder participating in the procurement process shall:

a) possess the necessary professional, technical, financial and managerial resources and competence, required for bidding documents, pre-qualification documents or bidder registration documents, as the case may be, issued by the procuring entity;

b) have fulfilled its obligations to pay taxes payable to Central Government or the State Government or any local authority as may be specified in the bidding documents, pre-qualification documents or bidder registration documents;

c) not be insolvent, in receivership, bankruptcy or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be subject to legal proceedings for any of the foregoing reasons;

d) not have their directors or officers convicted of any criminal offence related to their professional, conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of three years preceding the commencement of the procurement process, or not have been otherwise disqualified pursuant to debarment proceedings;

e) not have a conflict of interest as may be prescribed and specified in the pre-qualification documents, bidder registration documents or bidding documents, which materially affects fair competition;

f) fulfill any other qualifications as may be prescribed.
(3) Subject to the right of bidders to protect their intellectual property or trade secrets, the procuring entity may require a bidder to provide any such information or declaration as it considers necessary to make an evaluation in accordance with sub-section (1).

(4) Any requirement established pursuant to this section shall be set out in the pre-qualification documents or bidder registration documents, if any, and in the bidding documents and shall apply equally to all bidders.

The procuring entity shall evaluate the qualifications of bidders only in accordance with the requirement specified in this section.

5.4 Single-part and two-part bids

(1) Subject to the provisions of this Act and the rules and guidelines made thereunder, a procuring entity may choose to:

a) call for bids in which the technical, quality, and performance aspects, [commercial terms and conditions] and the financial aspects including the price are contained in a single envelope;

b) if it is of the opinion that it is essential to evaluate the technical aspects of a bid before considering its financial aspect, call for bids in two envelopes, namely:

(i) the techno-commercial bid containing the technical, quality and performance aspects, [commercial terms and conditions] and

(ii) the financial bid containing financial aspects including the price.

In case the procuring entity calls for bids in terms of clause (b) of sub-section (1), the techno-commercial bid shall be opened and evaluated first and the financial bid of only those bids that have been found technically acceptable shall be opened and evaluated.

5.5 Pre-qualification of bidders

(1) A procuring entity may opt for a pre-qualification process, with a view to identifying, prior to bidding, the bidders that are qualified for any specified period of time; and

(2) For the purpose of sub-section (1), a procuring entity may invite offers from prospective bidders by giving wide publicity to the invitation to pre-qualify and shall publish the particulars of the bidders who have been qualified on the State Public Procurement Portal.

(3) Where a procuring entity has undertaken a pre-qualification process in respect of any procurement, only such pre-qualified bidders shall be entitled to continue in the procurement proceedings.

(4) The procuring entity shall decide who is pre-qualified in accordance with section 5.3 and the criteria set out in the pre-qualification documents;

(5) Every pre-qualification process shall be carried out in such manner and in accordance with such procedure as may be prescribed.

5.6 Post-qualification

(1) The procuring entity shall, where lenders' bidders have not been pre-qualified, determine whether the bidders whose bid or proposal has been determined to offer lowest evaluated bid, in the case of procurement or the highest evaluated bid in the case of disposal of public assets by the bid, has the legal capacity, capability, and resources to carry out effectively the contract as offered in the bid before communicating the award decision.

(2) The criteria to be met shall be set out in the bidding documents and, if the bidder does not meet any of those criteria, the bid shall be rejected and the procuring entity shall make a similar determination for the next lowest evaluated bid in the case of procurement and next highest in case of disposal of public assets by bidder.

Comment [5.27]: May also consider including 'proprietary information'.

Comment [5.29]: As the sequences in two-part bidding shall be different, may consider stipulating separate provisions applicable to one-part bids and two-part bids.

Where rated criteria is used for evaluation, the procuring entity shall make a similar determination for the next highest ranked bid and not for the next lowest evaluated bid.
(a) A procuring entity shall require a bidder, who has submitted a lowest evaluated bid in the case of procurement or highest evaluated bid in the case of disposal by bid to demonstrate again its qualifications before the award of contract is confirmed;
(b) The criteria and procedures to be used in subsection (a) shall be the same as those used in the pre-qualification proceedings set out in section 5.3 of this Act and shall be specified in the bidding documents prepared by the procuring entity;
(c) The procuring entity shall, where bidder with the lowest or highest evaluated bid fails to post-quality, reject its bid and select the next lowest or highest evaluated bid from the remaining bids, provided the procuring entity has a right to reject all remaining bids in accordance with section 5.13.

5.7 Registration of bidders

(1) With a view to establishing reliable sources for a subject matter of procurement or a class of procurement, which may be commonly required across procuring entities or repeatedly required by a procuring entity, a procuring entity may maintain a panel of registered bidders;
(2) For the purpose of sub-section (1), a procuring entity may invite offers from prospective bidders by giving wide publicity to the invitation to register and such registration shall be done in accordance with section 5.3, this section and the criteria set out in the bidder registration documents;
(3) The procuring entity shall update the list of registered bidders by allowing potential bidders to apply for registration on a continuous basis or by inviting offers for registration at least once a year;
(4) The State Government may prescribe the procedure and conditions for registration of bidders and the period for which such registration shall be valid;
(5) Where a procuring entity does not register bidders in respect of a subject matter of procurement, it may use the list of registered bidders of any other procuring entity, if any;
(6) The results of the registration process shall be intimated to the bidders and the list of registered bidders for the subject matter of procurement shall be published in the State Public Procurement Portal.

5.8 Standard bidding documents

(1) The standard bidding documents separately for goods, works and services shall be included in the guidelines issued under this Act;
(2) The procuring entity shall use the standard bidding documents in the tendering process. Any deviation shall be documented and approved by appropriate authority.

5.9 Time frame for submission of bids

(1) Where fixing the last date by which bids are to be submitted by the bidders, the procuring entity shall take into account:
   a) the need of the bidders for having a reasonable time to prepare and submit their bids;
   b) the period envisaged for procurement as envisaged in procurement plan and bidding document;
(2) Subject to the provisions of section 5.11, the maximum time as may be allowed for submission of bids shall be the same for all bidders.

5.10 Pre-bid clarifications

(1) Any bidder may, in writing, seek clarifications from the procuring entity in respect of the bidding documents;
(2) The period within which the bidders may seek clarifications under sub-section (1) and the period within which the procuring entity shall respond to such requests for clarifications shall be specified in the bidding documents;

(3) All requests for clarifications and responses thereto shall be transmitted to all bidders and where applicable, shall be published on the State Public Procurement Portal;

(4) A procuring entity may hold a pre-bid conference to clarify doubts of potential bidders in respect of a particular procurement and the records of such conference shall be transmitted to all bidders and where applicable, shall be published on the State Public Procurement Portal;

5.11 Changes to bidding documents

(1) In case any modification is made to the bidding documents or any clarification is issued which materially affects the terms contained in the bidding documents, the procuring entity shall publish such modification or clarification in the same manner as the publication of the initial bidding documents;

(2) In case a clarification or modification is issued to the bidding documents, the procuring entity may, prior to the last date for submission of bids, extend such time limit in order to allow the bidders' sufficient time to take into account the clarification or modification, as the case may be, while submitting their bids;

(3) Any bidder who has submitted his bid in response to the original invitation shall have the opportunity to modify or re-submit it, as the case may be, within the period of time originally allotted or such extended time as may be allowed for submission of bids, when changes are made to the bidding documents by the procuring entity.

Provided that the bid last submitted or the bid as modified by the bidder shall be considered for evaluation.

5.12 The procedure relating to submission, opening and evaluation criteria

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

5.13 Exclusion of bids

(1) A procuring entity shall exclude a bid if:

a) the bidder is not qualified in terms of section 5.3;

b) the bid materially departs from the requirements specified in the bidding documents or it contains a false statement;

c) the bidder submitting the bid, his agent or any one acting on his behalf, gave or agreed to give, to any officer or employee of the procuring entity or other governmental authority, a gratification in any form or any other thing of value, so as to improperly influence the procurement process;

d) a bidder, in the opinion of the procuring entity, has a conflict of interest materially affecting fair competition.

(2) A bid shall be excluded as soon as such the cause for its exclusion is discovered;

(3) Every decision of a procuring entity to exclude a bid shall be for reasons to be recorded in writing;

(4) Every decision of the procuring entity under sub-section (3) shall be:

a) communicated to the concerned bidder in writing;

b) published on the State Public Procurement Portal.
5.14 Cancellation of the procurement process

(1) A procuring entity may, for reasons to be recorded in writing, cancel the process of procurement initiated by it:
   a) at any time prior to the acceptance of the successful bid; or
   b) after the successful bid is accepted in accordance with sub-sections (4) and (5).

(2) The procuring entity shall not open any bids or proposals after taking a decision to cancel the procurement and shall return such unopened bids or proposals;

(3) The decision of the procuring entity to cancel the procurement and reasons for such decision shall be immediately communicated to all bidders that participated in the procurement process;

(4) If the bidder whose bid has been accepted as successful fails to sign any written procurement contract as required, or fails to provide any required security for the performance of the contract, the procuring entity may cancel the procurement process;

(5) If a bidder is convicted of any offence under this Act, the procuring entity may:
   a) cancel the relevant procurement process if the bid of the convicted bidder has been declared as successful but no procurement contract has been entered into;
   b) rescind the relevant contract or forfeit the payment of all or a part of the contract value if the procurement contract has been entered into between the procuring entity and the convicted bidder.

5.15 Blacklisting

(1) The Authority shall have power to blacklist a bidder for a specified time from participating in public procurement proceedings and notify all procuring entities on such actions:

   a) A bidder has been blacklisted and barred from taking part in public procurement by a foreign country, international organisation or other foreign jurisdiction shall automatically be blacklisted from participating in public procurement in the state:
      i. In the case of fraud and corruption, for such period as is debarred by that foreign country, international organisation or foreign jurisdiction plus a further period of ten years; and
      ii. In the case other than fraud and corruption, for such period as is debarred by that foreign country, international organisation or foreign jurisdiction plus a further period of five years.

(2) A bidder shall be debarred and blacklisted from participating in public procurement or defined proceedings:
   a) found to have engaged in corrupt or fraudulent practices in the past and in doing so has engaged in a procurement process.
   b) the bidder fails to abide by a bid security declaration;
   c) The bidder breaches a procurement contract;
   d) the bidder makes false representation about his qualifications during bid proceedings.

(4) The Authority may debar and blacklist a bidder from participating in public procurement or defined proceedings as may be determined necessary by the Authority;

(5) Subject to subsections (3) and (4), the procedure for debarment shall be stipulated in the Regulations.

(6) A bidder blacklisted pursuant to this section may appeal against the decision to the Appeals Authority within 21 days from the date when he became aware or should have become aware of such a decision;

(7) The Authority shall keep and maintain a register of all blacklisted firms in accordance with this Act.
(8) A bidder blacklisted under this section shall not be permitted to enter a new supplies, contract or consulting firm during that period.

(9) Procuring entities shall not procure from, contract with or engage a bidder who has been blacklisted from participating in public procurement proceedings pursuant to this Act.

(10) The Authority shall inform the relevant professional bodies upon debarring and blacklisting a bidder.

(11) For the purpose of this section, the word bidder includes directors of a company or firm.

Chapter 6 Procurement methods

6.1 Method of procurement

(1) Subject to the provisions of this Act and the rules made thereunder, a procuring entity may procure a subject matter of procurement by means of any of the following methods:

- Open Competitive Bidding
  - Limited Bidding
  - Two stage Bidding
  - Single Source Procurement
  - Electronic Reverse Auction
  - Request for Quotations
  - Spot Purchase
  - Competitive negotiations
  - Rate Contract

- Any other method of procurement notified by the State Government satisfying the principles of procurement contained in this Act and which the State Government considers necessary in public interest.

- The State Government may, by notification, declare adoption of electronic procurement as mandatory for different stages and types of procurement; and, on such declaration, every requirement for written communication under this Act shall be deemed to have been satisfied if it were done by electronic means.

- In procuring a subject matter of procurement, every procuring entity shall follow the detailed procedures in respect of the relevant method of procurement as may be prescribed.

- The financial limit for each of the procurement method shall be as specified in relevant guidelines/regulations prescribed under the Act.

6.2 Open competitive bidding

(1) Open competitive bidding shall be the default procurement method, unless otherwise specified.

(2) Every procuring entity shall prefer the open competitive bidding as the most preferred method of procurement by default.

(3) Open competitive bidding may also be followed in case of two stage bidding in terms of section 6.5, electronic reverse auction in terms of section 6.6 and rate contract in terms of section 6.9.

(4) The procurement entity may follow the pre-qualification procedure specified in section 5.5 and invite bids from pre-qualified bidders only.

(5) Where the procuring entity chooses a method of procurement other than the open competitive bidding, it shall record the reasons and circumstances thereof.

(6) In case of an open competitive bidding, the procuring entity shall invite bids by publishing an invitation to bid on the State Public Procurement Portal and in at least two such other media as may be prescribed.
6.3 Limited bidding

(1) A procuring entity may choose to procure the subject matter of procurement by the method of limited bidding, if:

a) the subject matter of procurement can be supplied only by a limited number of bidders; or
b) the time and cost involved to examine and evaluate a large number of bids may not be commensurate with the value of the subject matter of procurement; or
c) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding; or
d) procurement from a category of prospective bidders is necessary in terms of sub-section (a) of section 5.2.

(2) Subject to the rules as may be made in this behalf, the procedure for limited bidding shall include the following:

a) the procuring entity shall issue an invitation to bid by writing directly and on the same day, to:

(i) all the bidders who can supply the subject matter of procurement in terms of clause (a) of sub-section (1); or
(ii) all the bidders who are registered for the subject matter of procurement with the procuring entity or with any other procuring entity, where procuring entity uses the list of registered bidders by each other procuring entity in terms of sub-section (3) of section 5.7; or
(iii) an adequate number of bidders who can supply the subject matter of procurement selected in a non-discriminatory manner to ensure effective competition, in case of clause (b) of sub-section (1);

b) a procuring entity may allow all prospective bidders who fulfill the qualification criteria laid down for the procurement, whether an invitation to bid has been issued to such a bidder or not, to participate in the bidding process.

6.4 Single source procurement

(1) A procuring entity may choose to procure the subject matter of procurement by the method of single source procurement, if:

a) the subject matter of procurement is available only from a particular prospective bidder, or a particular prospective bidder has exclusive rights with respect to the subject matter of procurement, such that no reasonable alternative or substitute source exists, and the use of any other procurement method would therefore not be possible; or
b) owing to a sudden unforeseen event, there is an extremely urgent need for the subject matter of procurement, and engaging in any other method of procurement would be impractical; or

c) the procuring entity, having procured goods, equipment, technology or services from a supplier, determines that additional supplies or services must be procured from that supplier for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services; or

d) there is an existing contract for the subject matter of procurement which can be extended for additional goods, works or services and that the procuring entity is satisfied that no advantage would be obtained by further competition, the prices are reasonable and provisions for such extension exist in the original contract; or

Comment [3145]: Please modify the clause as follows: this is applicable only to open bidding (where no invitation is issued) and not for limited bidding. Also clarify how the bid from an unregistered bidder for civil works is resisted in open bidding.

Comment [3146]: May consider including the comment that the bid from an unregistered bidder for civil works is resisted in open bidding.
6.6 Two-stage bidding

7. DRCs

8. Monitoring and evaluation

9. Dispute resolution

10. Communication

11. Appendices

12. Questions and answers

13. Annexes

14. ...
Chapter 7  Bid evaluation and contracting

7.1 Criteria for evaluation

(1) Same as otherwise provided in this Act or the rules or guidelines made thereunder or in any other law presently in force, the evaluation criteria shall relate to the subject matter of procurement and may include:
   a) the price;
   b) the cost of operating, maintaining and repairing goods or works, the time for delivery of goods, completion of works or provision of services, the characteristics of the subject matter of procurement, such as the functional characteristics of goods or works and the environmental characteristics of the subject matter, the terms of payment and of guarantees in respect of the subject matter of procurement;
   c) where relevant, the experience, reliability and professional and technical competence of the bidder and of the personnel to be involved in providing the subject matter of procurement.

(2) Where considered necessary, the procuring entity may also specify trials, sample testing and other additional methods of technical evaluation of a bid:
Provided the requirement of such trials, sample testing or additional methods of evaluation shall be indicated in the bidding documents and a record of such trials and testing shall be maintained in such manner as may be prescribed.

(3) To the extent practicable, all non-price evaluation criteria shall be objective and quantifiable;
(4) The criteria for evaluation of bids, including whether the requirements laid down in subsection (2) of section 5.2 are applicable, shall be contained in the bidding documents;
(5) Where applicable, the relative weights to be attached to each criterion shall be specified in the bidding documents;
(6) No criteria or procedure other than those mentioned in the bidding documents shall be used by the procuring entity in evaluating bids;
(7) A default evaluation criteria for various goods, works and services shall be specified in the guidelines as issued under this Act.

7.2 Price negotiation

Same as otherwise provided in section 6.4 or section 6.8 or in such circumstances and subject to such conditions as may be prescribed, no price negotiation shall be held by a procuring entity with a bidder with respect to a bid presented by him.

7.3 Terms and conditions of contract

(1) The terms and conditions of the procurement contracts entered into shall be in accordance with the provisions of this Act, the applicable rules and the conditions indicated in the bidding documents;
(2) The State Government shall prescribe standard terms and conditions of contract separately for goods, works and services, as may be applicable in the guidelines as issued under this Act;
(3) The standard terms and conditions as prepared under clause (2) of section 7.3 shall be incorporated in the procurement contracts entered into by procuring entities as applicable.
The procuring entity shall include special terms and conditions specific to subject matter of the procurement.

7.4 Award of contract

(1) Subject to the provisions of section 5.13 and sub-section (2) of section 5.2, the procuring entity shall consider a bid as successful:
Chapter 9  Institutional arrangement

9.1 Duties of Procuring Entity

(1) Confidentiality:-

a) Notwithstanding anything contained in this Act but subject to the provisions of any other law for the time being in force providing for disclosure of information, a procuring entity shall not disclose any information if such disclosure, in its opinion, is likely to:

(i) impede enforcement of any law,
(ii) affect the security or strategic interests of India,
(iii) affect the intellectual property rights or legitimate commercial interests of bidders, and
(iv) affect the legitimate commercial interests of the procuring entity in situations that may include when the procurement relates to a project in which the procuring entity is to make a competitive bid, or the intellectual property rights of the procuring entity.

b) Except as otherwise provided in this Act, a procuring entity shall treat all communications with bidders related to the procurement process in such manner as to avoid their disclosure to competing bidders or to any other person not authorised to have access to such information;

c) The procuring entity may impose on bidders and sub-contractors, if there are any for fulfilling the terms of the procurement contract, conditions aimed at protecting information, the disclosure of which violates sub-section (1).

(2) Notwithstanding anything to the contrary contained in any written law, where any expenditure is to be incurred on any procurement of goods, works or services, it shall be the duty of the officer of the procuring entity as designated under this Act to ensure the procurement of goods, works or services is in accordance with the procedures prescribed under this Act or Regulations.

9.2 State Procurement Facilitation Cell

(1) The State Government shall establish a State Procurement Facilitation Cell which shall be headed by an officer not below the rank of a Secretary to the Government;

(2) The State Procurement Facilitation Cell shall discharge the following functions, namely:

a) to maintain and update the State Public Procurement Portal set up under section 8.1;
b) to arrange for training and certification specified in terms of section 9.4;
c) to recommend to the State Government measures for effective implementation of the provisions of this Act;
d) to provide guidance, consistent with the provisions of this Act and the rules and guidelines made thereunder, to the procuring entities with respect to the matter relating to public procurement;
e) to study different methods of public procurement and prepare and recommend standard bidding documents, pre-qualification documents or bidder registration documents;
f) subject to the provisions of sub-section (2) of section 6.1, encourage procuring entities to adopt electronic procurement; and
g) to discharge such other functions as may be assigned to it by the State Government consistent with the provisions of this Act and the rules and guidelines made thereunder.
(g) No information that would impair the protection of essential security interests of India, or impede the enforcement of law or fair competition, or prejudice the legitimate commercial interests of the bidder or the procuring entity, shall be disclosed in a proceeding under this section.

11.2 Stay of procurement proceedings.-

While hearing of an appeal under section 11.1, the officer or authority hearing the appeal may, on an application made in this behalf and after affording a reasonable opportunity of hearing to the parties concerned, stay the procurement proceedings pending disposal of the appeal, if he, or it, is satisfied that failure to do so is likely to lead to miscarriage of justice.

11.3 Appeal not to lie in certain cases.-

No appeal under section 11.1 shall lie against any decision of the procuring entity relating to the following matters, namely:

a) determination of need of procurement in terms of section 5.1;

b) provisions limiting participation of bidders in the bid process in terms of the provisions of section 5.2;

c) the decision of whether or not to enter into negotiations in terms of section 7.3;

d) cancellation of a procurement process in terms of section 5.16;

e) applicability of the provisions of confidentiality under section (1).

Chapter 12: Offence and penalties

12.1 Punishment for taking gratification or valuable thing in respect of public procurement.-

Whoever, being an officer or employee of the procuring entity acting in connection with any procurement process, accepts or obtains or agrees to accept or attempt to obtain from any person, for himself or for any other person, any gratification other than legal remuneration or any valuable thing without consideration or for a consideration which he knows to be inadequate, in connection with such public procurement, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, shall be punishable with imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine.

12.2 Interference with procurement process

(1) Whoever-

a) interferes with or influences any procurement process with the intention of securing any wrongful gain or undue advantage for any prospective bidder or bidder; or

b) interferes with the procurement process with the intention of causing any unfair disadvantage for any prospective bidder or bidder; or

c) engages in any action or lobbying, directly or indirectly, with the objective of unduly restricting fair competition; or

d) intentionally influences any procuring entity or any officer or employee thereof or willfully or fraudulently makes any assertion or representation that would restrict or constrain fair competition in any procurement process; or

e) engages a former officer or employee of a procuring entity as an employee, director, consultant, adviser or otherwise, within a period of one year after such former officer or employee was associated with a procurement in which the employer had an interest; or

f) engages in any form of bid-rigging, collusive bidding or anticompetitive behaviour in the procurement process; or

g) intentionally breaches confidentiality referred to in section (1) for any undue gain.
12.5. A person who is alleged to be an official or a public servant in India shall be liable to be prosecuted under the Act if he is alleged to have committed an offence:
(a) under the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1988) or
(b) under the Prevention of Money Laundering Act, 2002 (Central Act No. 12 of 2002) or
(c) under any other law for the time being in force.

12.6. A person who is alleged to be an official or a public servant in India shall be liable to be prosecuted under the Act if he is alleged to have committed an offence:
(a) under the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1988) or
(b) under the Prevention of Money Laundering Act, 2002 (Central Act No. 12 of 2002) or
(c) under any other law for the time being in force.

12.7. A person who is alleged to be an official or a public servant in India shall be liable to be prosecuted under the Act if he is alleged to have committed an offence:
(a) under the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1988) or
(b) under the Prevention of Money Laundering Act, 2002 (Central Act No. 12 of 2002) or
(c) under any other law for the time being in force.

12.8. A person who is alleged to be an official or a public servant in India shall be liable to be prosecuted under the Act if he is alleged to have committed an offence:
(a) under the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1988) or
(b) under the Prevention of Money Laundering Act, 2002 (Central Act No. 12 of 2002) or
(c) under any other law for the time being in force.
b) under the Indian Penal Code, 1860 (Central Act No. 45 of 1860) or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(2) A bidder debarred under sub-section (1) shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date on which he was debarred.

(3) If a procuring entity finds that a bidder has breached the code of integrity prescribed in terms of section 2.3, it may debar the bidder for a period not exceeding three years;

(4) Where the entire bid security or the entire performance security or any substitute thereof, as the case may be, of a bidder has been forfeited by a procuring entity in respect of any procurement process or procurement contract, the bidder may be debarred from participating in any procurement process undertaken by the procuring entity for a period not exceeding three years;

(5) The State Government or a procuring entity, as the case may be, shall not debar a bidder under this section unless such bidder has been given a reasonable opportunity of being heard.

12.7 Previous sanction necessary for prosecution.-

No court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant during the course of his employment, except with the previous sanction:

a) in case of a person who is employed in connection with the affairs of the State and is not removable from his office save by or with the sanction of the State Government, of that Government;

b) in the case of any other person, of the authority competent to remove him from his office.

Chapter 13 Miscellaneous

13.1 Application of other laws.-

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

13.2 Recovery of sums payable under the Act.-

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

13.3 Service of notice, documents and orders.-

(a) For the purposes of this Act a notice, document or order shall be deemed to be served-

i. on any individual by-

(i) delivering it to the person personally; or

(ii) leaving it at, or sending it by post to, the address of the place of residence or business of the person last known;

b) on a body corporate by leaving it at, or sending it by post to, the registered office of the body corporate.

(b) For the purposes of this Act, when the procedure laid down by sub-section (1) is followed, service shall be deemed to be effected by properly addressing, preparring, and posting the document, notice, or order, as the case may be.

13.4 Power of State Government to make rules.-

(i) The State Government may, by notification, make rules for carrying out the provisions of this Act and different sets of rules may be made for different classes or categories of procurers or procuring entities.

Comment [25.60]: Bidder will already be penalised due to forfeiture of performance security. Any further debarment may not be equitable.
(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:

(i) procurements covered under sub-section (4) of section 1.3;
(ii) matters to be decided while determining need for procurement under section 5.1;
(iii) circumstances in which participation of bidders may be limited under section 5.3;
(iv) identification and treatment of conflict of interest situations under section 5.3;
(v) additional qualifications to be fulfilled by bidders under clause (i) of sub-section (1) of section 5.3;
(vi) time frame for various stages of the process of procurement under section 4.2;
(vii) information or record of procurement proceedings required to be maintained under clause (i) of sub-section (1) of section 2.2;
(viii) code of integrity under section 2.2;
(ix) guidelines for drawing up the description of the subject matter of procurement under section 5.1;
(x) evaluation criteria under sub-section (1) of section 7.1;
(xi) maintenance of records of trials conducted under sub-section (2) of section 7.1;
(xii) provisions relating to price negotiations under section 7.2;
(xiii) terms and conditions of procurement contract under section 7.3;
(xiv) information to be provided on the State Public Procurement Portal under section 8.1;
(xv) procedure for pre-qualification under section 5.3;
(xvi) procedure and conditions for registration of bidders under section 5.7;
(xvii) provisions relating to content of bidding documents as may be prescribed the provisions of this Act and the rules made thereunder;
(xviii) the State Government may prescribe standard condition to be included in bidding documents including its form;
(xix) procedure for submission, opening and evaluation of bids, including constitution of committees for those purposes under section 5.12;
(xx) procedure in respect of various methods of procurement under section 6.1;
(xxi) manner of publication of bid under sub-section (5) of section 6.2;
(xxii) provisions relating to monetary value for procurement through request for quotations and spot purchase under section 6.7;
(xxiii) form, manner and fee for appeals under section 6.8;
(xxiv) procedure to be followed while hearing appeal under section 11.1;
(xxv) professional standards, training and certification for officials dealing with procurement matters under section 9.4;
(xxvi) provision relating to bidder securities, performance securities, inspection of works, goods and services, modification and withdrawal of bids, and contract management;
(xxvii) any other matter that is required to be prescribed by the State Government for carrying out the provisions of this Act.

(3) All rules made under this section shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days, which may comprise in one session or in two successive sessions and, if before the expiry of the session in which they are so laid or of the session immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any modification or annulment shall be without prejudice to the validity of anything previously done thereunder.