

The Public Procurement Bill, 2011

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Preface

In his address to the nation on the Independence Day of 2011, the Prime Minister announced that the Government will introduce a Bill on public procurement by the end of the year in order to enact a law. The objective is to lay down the principles and practices of public procurement in the backdrop of frequent complaints and the pressing need to minimise corruption in government purchases. Earlier, Smt. Sonia Gandhi, Chairperson of the United Progressive Alliance, had stated in her address on December 18, 2010 that through legislation and clear procedures, full transparency in public procurement and contracts must be ensured.

All over the world, public procurement is viewed as an area where problems of misgovernance tend to arise. The scale of public procurement is simply enormous and estimates vary between 15 to 20 per cent of GDP or about Rs. 12 to 15 lakh crore per annum in case of India. The OECD has estimated that losses due to inappropriate procedures can be 20 to 30 percent. Reform of public procurement is a major potential bulwark against corruption.

Several developed and developing countries have enacted their respective procurement laws during the past two decades. Almost 50 countries have enacted procurement laws of their own. By comparison, India seems to have lagged behind. Its public procurement is regulated by administrative rules which are not only inadequate but also lack the force of law. Malpractices in procurement do not often carry any deterrent consequences and the associated lack of accountability enhances the potential for corruption. Departmental action against erring officials is rare, if not absent. Suppliers affected by malpractices have no recourse except through civil courts that are unable to offer any timely relief. As a result, public procurement does not inspire much public confidence.

The United Nations have also favoured the enactment of procurement laws by the respective member nations. UNCITRAL formulated a model procurement law in 1994 and commended the same for consideration by all member nations. This has since been replaced by a revised model procurement law in July 2011. The model law provides a useful legislative framework for regulating public procurement.

Bringing public procurement in India within the four corners of a governing law will have many advantages. It will provide a clear set of rules that would ensure competition, transparency, probity, fairness and equality in public procurement, and all of this will reduce corruption. This would not only save large sums of public money, it would also improve the quality of the goods and services procured by the public entities either for their own use or for the use of the public. The impact of improvements in public procurement would indeed be multi-faceted.

A draft of the Public Procurement Bill 2011 has been written by Shri Gajendra Haldea whom I have encouraged in this endeavour. It took him almost a year of effort to write this Bill in line with the best practices prevailing in India and abroad. This initiative was taken in the belief that such a law is urgently required for ensuring integrity, probity and transparency in public procurement.

This draft of the Public Procurement Bill responds to the aforesaid announcements of the Prime Minister and the Chairperson of UPA, and could serve as an input for discussion among experts and stakeholders with a view to building consensus. A sound and well-regulated procurement law would go a long way in improving governance.



(Montek Singh Ahluwalia)

September 20, 2011

Overview

Need for a law

1. While addressing the nation on August 15, 2011, the Prime Minister had announced that the Government would soon introduce a public procurement legislation to lay down the principles and practices with regard to government purchases. Earlier, Smt. Sonia Gandhi, Chairperson of the United Progressive Alliance, had stated in her address on December 18, 2010 that through legislation and clear procedures, full transparency in public procurement and contracts must be ensured.
2. There is a growing consensus in favour of enacting a public procurement law in India with the objective of maximising economy and efficiency, promoting competition among suppliers and contractors while providing a fair and equitable treatment, ensuring transparency and fairness in the procurement process, and promoting the integrity of, and public confidence in, the procurement process.
3. During the past few decades, a large number of countries have enacted their respective public procurement laws. They include USA, European Union countries, Canada, China, South Korea, Malaysia, Mauritius, Afghanistan, Bangladesh, and Nepal. A Committee on Public Procurement, set up by the Government in January 2011, has recommended that a public procurement law should be enacted in India at the earliest. The United Nations Commission on International Trade Law (UNCITRAL) had adopted the Model law on Public Procurement in 1994 and commended its enactment by the member nations. The Model Law has since been revised and adopted by the UNCITRAL in July 2011.
4. At present, public procurement in India is governed by administrative rules and procedures which only attract departmental action in case of violation. These rules do not create any rights in favour of the public in general, and the potential suppliers, in particular. Nor do they provide for a fair and effective mechanism for dispute resolution, thus virtually denying any recourse against unfair and arbitrary decisions of the procuring entities. Another limitation of this arrangement is the absence of penal consequences for

misrepresentation, cheating or fraud in public procurement, except under the normal penal codes which are inadequate for dealing with complex procurement matters.

5. Estimates of public procurement, including by public sector companies and statutory authorities, vary between 20 per cent of GDP (WTO estimates) to 30 per cent of GDP (OECD estimates). On a conservative estimate, this amount could be in the region of about Rs. 15 lakh crore. Ensuring transparency and competition in public procurement would not only help in saving several thousand crores of rupees every year, it would also improve the quality of goods and services acquired by the public authorities, besides minimising the potential for corruption. By any standards, a public procurement law in India is long overdue. Hence, this Public Procurement Bill.

6. The Public Procurement Bill 2011 draws substantially from the UNCITRAL Model Law of July 2011. The laws and procurement practices of developed countries such as the USA and European Union countries have also been taken into consideration to some extent. They have not only been suitably adapted for Indian conditions, a number of new provisions have been formulated to suit the legal and institutional environment in India.

Principles and methods of procurement

7. The Bill lays down the broad principles and procedures that must govern all public procurement. The objective is to create a fair, transparent and competitive environment that would ensure procurement of quality works, goods and services at the least cost.

8. The Bill recognises the various methods to be used for procurement of different categories of works, goods and services. The methods include single and two-stage bidding systems, restricted bidding, request for quotations, direct purchase of commercial goods, electronic reverse auctions and framework agreements. The Bill provides sufficient flexibility to the procuring entities to choose from among various methods of procurement to suit their individual requirements.

9. The Bill is meant to provide a framework law for setting out the basic legal rules governing public procurement. It would need to be supplemented by detailed rules to be made in line with international best practices. The Bill, therefore, empowers the

Government to make Procurement Rules for dealing with the requisite details of procurement systems.

10. The Bill exempts procurements relating to national defence, national security, emergencies, natural calamities and epidemics from the mandatory provisions of the proposed Act. However, it empowers the Government to apply selected provisions of the Act to such exempted procurements. The Government would also be empowered to make other exceptions if the need so arises.

Department of Procurement Policy

11. Recognising the enormity and complexity of issues, the developed countries have established the institutional arrangements necessary for evolving and enforcing the policy and regulatory framework for public procurement. For example, in the USA, the law provides for an Administrator for Federal Procurement Policy to be appointed by the President, with approval of the Senate, while the UK has an Office of Government Business under the Cabinet Office. By comparison, India does not have any institutional structure dedicated to public procurement. As a result, its policy framework as well as the rules of procurement are somewhat simplistic, if not archaic, and need a complete overhaul. This would require a significant build-up of knowledge and institutional capacity that must be nurtured over time for meeting the ever growing challenges of public procurement. The Bill, therefore, provides for establishing a dedicated Department of Procurement Policy.

12. The Bill makes specific provision to restrain the Department of Procurement Policy from interfering with the procurement process of the procuring entities. This will help preserve the autonomy, efficiency and accountability of the respective procuring entities.

The Procurement Regulatory Authority

13. The Bill provides for the Secretary level officers of the Department of Procurement Policy to also act as the chairperson and members of the Procurement Regulatory Authority that would maintain an oversight on compliance of the Act and the rules made thereunder, in addition to discharging the quasi-judicial functions of settling

disputes. The Authority would also advise the Government on diverse matters relating to public procurement.

Dispute resolution

14. India does not have a codified system of dispute resolution for matters relating to public procurement. As a result, discriminatory, unjust or arbitrary actions often go unchallenged, especially because approaching the civil courts is usually not regarded as a credible option. The Bill provides for an effective and speedy resolution of disputes through time-bound disposal of cases by the head of the procuring entity from where an appeal would lie to the Procurement Regulatory Authority. The Bill further provides for constitution of a Tribunal for Public Procurement to hear appeals from the orders of the Authority. The objective is to create a specialised and dedicated forum that would ensure speedy disposal compared to the long delays observed in the High Courts. Appeals from the Tribunal would lie directly to the Supreme Court.

Standardisation of documents

15. The Bill provides for prescribing the standard terms that would form part of the contracts of different categories of procurement. The Bill also provides for standardising the formats for different types of procurement contracts. Such standardisation is expected to reduce the transaction costs of procurement, besides enhancing competition and transparency while minimising the potential for corruption.

Bid process

16. The Bill specifies the best practices for conducting the bid process, which includes bid invitation, contents of bidding documents, clarification of bidders' doubts, bid submission, bid securities, public opening of bids, evaluation of bids and award of contracts.

Public Private Partnerships

17. Procurement through Public Private Partnerships (PPPs) is a recent phenomenon which has witnessed rapid growth. However, there are no clear rules for regulating PPP projects. It is, therefore, necessary to specify the rules that would regulate PPPs,

especially because PPPs affect a vast multitude of users in sectors such as roads, ports, airports, power etc. The Bill lays down the broad principles and an enabling framework for regulating the procurement of goods and services through PPPs.

Investigation and enforcement

18. The Bill provides for investigation by the Authority in cases involving violation of the Act. Where necessary, the Authority may, after following the due process, give directions to the procuring entities to comply with the provisions of law.

Offences and penalties

19. The Bill defines the offences relating to public procurement and specifies stiff penalties, including imprisonment and fines. The offences include receiving or granting undue gains, interference with the bid process, frivolous or malicious litigation and complaints, fraudulent claims and non-compliance with directions. The Bill also provides for debarment of bidders in certain cases.

Special courts

20. For speedy trial of offences, the Bill empowers the Government to set up special courts, as necessary. The special courts would have the powers of a Court of Sessions and may also conduct summary trials.

Miscellaneous

21. The Bill provides for e-procurement, appointment of a counsellor for competition in each procuring entity; protection from reprisals against disclosures by the employees of suppliers; adjustments for inflation; recoveries of sums payable; bar on jurisdiction of civil courts; power to require statistics and returns; delegation of authority; and other incidental or consequential matters.

Conclusion

22. The Bill has been drafted with the objective of ensuring competition, transparency, probity, quality, efficiency and economy in public procurement. It is expected to

minimise corruption and arbitrary behaviour, besides improving the quality of goods and services, to be procured at the least cost to the exchequer.

THE PUBLIC PROCUREMENT BILL, 2011

An Act to regulate public procurement with the objective of maximising economy and efficiency, promoting competition among suppliers and contractors while ensuring a fair, transparent and equitable procurement process, and promoting the integrity of, and public confidence in, the procurement process undertaken by the Central Government, its statutory bodies and companies.

Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Public Procurement Act, 2011.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall apply to all public procurement.
- (4) The Act shall come into force on such date as the Central Government may, by notification, appoint.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions

2. In this Act, unless the context otherwise requires,-
 - (a) “Authority” means the Procurement Regulatory Authority constituted under section 14;

(b) “bid” means the formal offer made in pursuance of an invitation by the procuring entity and includes any bid, tender, proposal, offer or quotation, but does not include any application for pre-selection, pre-qualification or qualification, if it is made in the first stage of a bidding process comprising of two stages;

(c) “bidder” means a person who is eligible for presenting a bid and includes a potential bidder or a person who has signed a procurement contract or a framework agreement;

(d) “bid date” means the deadline specified by the procuring entity for receiving bids in the course of a bid process for a particular procurement;

(e) “bidding documents” means the documents issued by the procuring entity, including any amendments thereto, that set out the terms and conditions of the given procurement and may include schedule of works, rates, requirement of goods or services, technical specifications, procedure and criteria for selection and such other particulars as may be necessary for inviting bids for any procurement, and shall include any invitation or request for pre-qualification, pre-selection, qualification, proposals or bids, as the case may be;

(f) “bid process” means the entire process comprising the invitation of applications, proposals or bids, selection of preferred or successful bidder and execution of the procurement contract or framework agreement, and includes pre-selection, pre-qualification, short-listing, pre-bid meetings, negotiations, auctions and all other processes and communications incidental or consequential to the particular procurement, but does not include any action or process subsequent to the coming into force of the procurement contract or framework agreement;

(g) “bid security” means a security provided to the procuring entity to secure the fulfilment of any obligation specified in the bidding documents and includes such arrangements as bank guarantees, surety bonds, stand-by letters of credit, bankers’ cheques or cash deposits;

- (h) “classified information” means any information that the procuring entity is entitled to deny or withhold under the provisions of the Right to Information Act 2005 and includes any information the non-disclosure of which is necessary for protection of national security interests;
- (i) “company” means a company registered under the Companies Act, 1956 or subsidiary thereof, and includes a limited liability partnership registered under the Limited Liability Partnership Act, 2008 or a society registered under the applicable laws;
- (j) “competition”, when used with respect to procurement, means that all entities having the requisite physical and financial capacity, experience and qualifications, as the case may be, are permitted to submit their bids or proposals, and “competitive” shall be construed accordingly;
- (k) “concession agreement” means an agreement entered into between a public entity and a private entity for and in respect of a public-private partnership project;
- (l) “concessionaire” means an entity which has entered into a concession agreement with a public entity;
- (m) “contract value” means that amount which is specified in the procurement contract as payable by the procuring entity for the subject matter of the procurement to be provided by a vendor under that contract, and in the case of a concession agreement, means the amount specified as the termination payment;
- (n) “Department” means the Department of Procurement Policy established under section 10;
- (o) “direct invitation” means an invitation addressed directly to one or a restricted number of bidders, but excludes invitation addressed to a limited number of bidders following pre-qualification, short-listing or pre-selection process;
- (p) “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;

(q) “framework agreement” means an agreement or agreements between the procuring entity and the selected bidder(s) concluded upon completion of the first stage of the framework agreement procedure;

(r) “framework agreement procedure” means a bid process conducted in two stages: a first stage to select bidder(s) to be the party or parties to a framework agreement with a procuring entity, and a second stage to award a procurement contract under the framework agreement to a bidder party to the framework agreement, and may comprise of the following:

(i) “closed framework agreement”, which means a framework agreement to which no bidder that is not initially a party to the framework agreement may subsequently become a party; or

(ii) “open framework agreement”, which means a framework agreement to which bidder(s) in addition to the initial parties may subsequently become a party or parties; and

(iii) “framework agreement procedure with second-stage competition”, which means a procedure under an open framework agreement or a closed framework agreement with more than one bidder in which certain terms and conditions of the procurement that cannot be established with sufficient precision when the framework agreement is concluded are to be established or refined through the second-stage competition; or

(iv) “framework agreement procedure without second-stage competition”, which means a procedure under a closed framework agreement in which all terms and conditions of the procurement are established when the framework agreement is concluded;

(s) “goods” means raw materials, commodities, products, equipment, electricity and other objects or assets of every kind and description, in solid, liquid

or gaseous form, and includes services incidental or consequential to the supply of goods if the value of those services does not exceed that of the goods themselves;

(t) “Government” means the Central Government;

(u) “head of the procuring entity” means the highest ranking officer of the procuring entity, but does not include the head of any constituent, sub-division or unit thereof;

(v) “invitation” means an invitation to present submissions or to participate in the request for proposals, pre-selection or pre-qualification process or in an electronic reverse auction, as the case may be;

(w) “person” means and includes one or more individuals, partnerships, associations, societies, companies, trusts, trustees, receivers, legal representatives or other legal or juristic persons;

(x) “pre-selection” means the process set out in section 98 to identify, prior to invitation, bidders that are qualified for the procurement concerned;

(y) “pre-selection documents” means the documents issued by the procuring entity under sub-section (3) of section 98 of the Act that set out the terms and conditions of the pre-selection process;

(z) “pre-qualification” means the process set out in section 49 to identify, prior to invitation to bid, a limited number of bidders that best meet the qualification criteria for the procurement concerned;

(aa) “Pre-qualification documents” means documents issued by the procuring entity under section 49 that set out the terms and conditions of the pre-qualification process;

(ab) “prescribed” means prescribed by rules made under this Act;

(ac) “procurement” or “public procurement” means the acquisition of works, goods or services by a procuring entity, and includes all stages of the process of acquisition, by purchase, lease, licence or otherwise, of works, goods or services,

beginning with the process for determining the need for such acquisition and ending with completion and expiry of the procurement contract or framework agreement, but does not include any acquisition without consideration, and “procure” or “procured” shall be construed accordingly;

(ad) “procurement contract” or “contract” means a contract between a procuring entity and any person for and in respect of the subject matter of the procurement and includes a concession agreement, power purchase agreement, lease agreement, hire purchase agreement, revenue collection agreement, purchase order, sale order, selling rights, service rights, operation and maintenance agreement, service contract, agreement for public private partnership between a procuring entity and any person, or an agreement for use or exploitation of land, water, air or other natural resources of any kind or description for the purpose of providing any works, goods or services to the procuring entity or to other persons;

(ae) “Procurement Rules” means the rules prescribed by the Department of Procurement Policy for regulating the subject matter of the procurement in accordance with the provisions of this Act;

(af) “procuring entity” means any entity specified in section 3;

(ag) “public entity” means any ministry or department of the Government including any agency, unit or sub-division thereof, any statutory body constituted or controlled by the Government, any company, society or trust owned or controlled by the Government, or any corporate entity in which the Government and/ or a public sector undertaking have controlling shares;

(ah) “public-private partnership project” or “PPP project” means a project based on a concession agreement which has a term exceeding five years and is awarded by a public entity to a private entity for providing any works, goods or services to the public entity or to specified users or class of users on payment of user charges, annuity or unitary payment, as the case may be, or in lieu of other consideration such as land or other natural resource, but does not include a contract which solely relates to sale of goods, provision of services or construction

of works, including the maintenance thereof, and the term “public-private partnership” shall be construed accordingly;

(ai) “services” means any object of procurement other than goods or works and includes any services classified or declared as such by the procuring entity and includes all works or goods incidental or consequential to the provision of such services;

(aj) “short-listing” means the short-listing of bidders from the list of pre-qualified bidders in accordance with the pre-qualification documents issued by the procuring entity under sub-section (4) of section 97 that set out the terms and conditions of the short-listing process;

(ak) “socio-economic policies” means environmental, social, economic and other policies of the Government authorised or required by the Procurement Rules or other applicable laws to be taken into account by the procuring entity in the course of any bid process;

(al) “standards” means the criteria for determining the efficiency and effectiveness of the procurement contract by measuring the performance of the various elements of such contract and the outcomes thereof;

(am) “standstill period” means the period specified in the notice of acceptance of the successful bid communicated to all bidders in accordance with sub-section (2) of section 54 and refers to the period during which the procurement contract or the framework agreement shall not enter into force and for which period the successful bidder shall have no right of compensation in the event the bid process, the procurement contract or the framework agreement, as the case may be, are modified, suspended or terminated in any review or appeal proceedings under this Act;

(an) “subject matter of the procurement” means the works, goods or services, as the case may be, to be procured or being procured by the procuring entity;

(ao) “submission” means and includes a proposal, offer, quotation or bid referred to collectively or generically, and includes, where the context so requires, initial or indicative submissions or the application for pre-qualification or pre-selection;

(ap) “supplier or contractor” means, according to the context, any potential party or any party to the bid process, the procurement contract or the framework agreement;

(aq) “Tribunal” means the Tribunal for Public Procurement constituted under section 121;

(ar) “users” mean the persons or class of persons who are entitled to use any works, goods or services procured by a procuring entity for the benefit of such persons on payment of a fee or otherwise;

(as) “vendor” means a supplier or contractor from whom any works, goods or services have been or are to be procured, and includes any potential party or the party to a procurement contract or framework agreement with the procuring entity;

(at) “works” means all works associated with the construction, reconstruction, erection, demolition, excavation, drilling, survey, investigation, repair or renovation of a building, road or structure and includes:

- (i) works carried out against payment by the procuring entity;
- (ii) works carried out under a concession agreement that provides for recovery of charges and payments from the users, procuring entity or any other person;
- (iii) installation of equipment or materials;
- (iv) development of real estate; and
- (v) any services which are incidental or consequential to the works and are included in the procurement contract; and

(au) “year” or “financial year” means an year commencing on April 1 of a calendar year and concluding on March 31 of the following calendar year or any substitute thereof as may be notified by the Government;

CHAPTER II

PROCURING ENTITIES

Procuring entities

3. (1) Every ministry or department of the Government or any agency, unit or sub-division thereof, any statutory body constituted or controlled by the Government, and any company, society or trust owned or controlled by the Government shall, when engaging in any procurement, either individually or in consortium, be deemed to be a procuring entity under this Act and shall include any officer or agent acting for and on behalf of such procuring entity.

(2) The Government may, by notification, declare any entity to be deemed a procuring entity for the purposes of the whole or any part of this Act if, –

- (a) the Government provides substantial public funds to that entity in any form including equity, loan or grant;
- (b) the Government provides any guarantee or other security to that entity;
- (c) the Government provides land to that entity at nominal cost;
- (d) the entity is procuring any works, goods or services, the cost of which is to be borne by a public entity through a cost-plus arrangement;
- (e) the entity is procuring any works, goods or services in pursuance of an international agreement to which the Government is a party; or
- (f) the Government grants to that entity an exclusive licence, monopoly or quasi-monopoly for the sale of goods that the entity sells or the provision of services that it provides, including infrastructure services.

and upon such notification, the provisions of this Act specified in such notification shall apply as if the notified entity is a procuring entity under this Act.

(3) It shall be the duty and obligation of every procuring entity to carry out all procurement in accordance with the provisions of this Act.

Act to apply to all procurement entities

4. (1) Except as provided in section 5, every procuring entity shall carry out its procurement in accordance with the provisions of this Act.

(2) The procuring entity shall carry out its procurement procedures and processes in a fair, efficient, economic and transparent manner.

Exemption for certain procurement

5. (1) The provisions of this Act shall not apply to, -

- (a) procurement of works, goods or services required for purposes of national defence or national security;
- (b) procurement involving emergencies, natural calamities or epidemics; and
- (c) such other procurement or class of procurements as may be notified by the Department of Procurement Policy, subject to such conditions as may be specified.

(2) The Government may, in consultation with the Authority, prescribe the rules for regulating the procurement of works, goods or services which are exempted under sub-section (1), and may also prescribe that certain provisions of this Act shall apply to such procurement. Any procurement under such rules shall be deemed to be a procurement under this Act.

(3) A procuring entity may, in respect of any procurement or category of procurement which is exempted under sub-section (1) of this section, by notification direct or in individual cases declare to the bidders in the invitation to bid, as the case may be, that the provisions of this Act shall apply to that procurement or category of procurement, and thereupon the provisions of this Act shall apply as if such procurement is not exempted under sub-section (1) of this section.

(4) The Government may, in public interest, exempt any procurement or category of procurement from the application of any provision of this Act for a specified period and shall prescribe the procedure, restrictions and conditions that will apply in lieu of such provision.

Review in cases of non-compliance by the procuring entity

6. (1) Subject to sub-section (3) of this section, any bidder or vendor who claims to have suffered, or may suffer, loss or injury due to non-compliance of a decision or action of the procuring entity with the provisions of this Act, the rules made thereunder or any direction or order issued thereunder, may file a review petition before the head of that procuring entity challenging the decision or action concerned within the period specified in sub-section (2) of this section and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed.

(2) A review petition under sub-section (1) of this section may be filed before the head of the procuring entity within fifteen days of the day on which the petitioner became aware of the circumstances giving rise to the review petition or of when it should have become aware of those circumstances, whichever is earlier. A copy of the review petition shall be provided forthwith by the petitioner to the officer of the procuring entity named in the review petition for failure to comply with the Act or with the rules, directions or orders made thereunder.

Provided that no review in respect of the terms of the invitation to pre-qualification, pre-selection or bid, as the case may be, shall be filed after fifteen days of the date of issue of such terms of the invitation and no review in respect of the decisions taken by the procuring entity in the pre-qualification or pre-selection proceedings shall be filed after fifteen day of the date of communication of such decisions.

Provided further that the head of the procuring entity may entertain a review petition after the expiry of the said period of fifteen days if it is satisfied that the petitioner was prevented by sufficient cause from filing the review petition within that period.

(3) A review petition filed under this section shall be dealt with as expeditiously as possible and endeavour shall be made by the head of the procuring entity to dispose of the petition finally within thirty days from the date of receipt of the petition.

(4) Where any review petition can not be disposed off within the period of thirty days specified in sub-section (3) of this section, the head of the procuring entity shall record its reasons in writing for not disposing of the petition within the said period and shall endeavour to dispose of the petition finally within a further period not exceeding thirty days.

(5) If the head of the procuring entity does not pass a final order within the time specified in sub-section (3) of this section, the petitioner shall be entitled immediately thereafter to file an appeal under section 24. Upon the filing of such appeal, the competence of the head of the procuring entity to entertain the review petition shall cease.

(6) The head of the procuring entity may authorise any person, as he deems fit, to represent the interest of the users or consumers, if any, in the proceedings before it.

(7) The head of the procuring entity may, for the purpose of examining the legality, propriety or correctness of any order made by the procuring entity under this Act in relation to any proceeding, on its own motion or otherwise, hear the parties and call for the records of such proceedings and make such order in the case as it thinks fit to uphold, modify or overturn any decision or action taken in the bid process to which the review petition relates.

(8) No information shall be disclosed in the review proceedings and no public hearing shall take place if doing so would impair the protection of national security interests, cause disclosure of classified information, impede law enforcement, prejudice the legitimate commercial interests of the bidders, impede fair competition or contravene any law.

(9) The order of the head of the procuring entity shall be final unless it is modified or set aside in an appeal filed under section 24.

Certain rules to apply to review proceedings

7. (1) After the filing of a review petition under section 6, the head of the procuring entity shall, within five days of the date of such filing, give notice to the officer, if any, of the procuring entity named in the review petition and to all bidders participating in the bid process to which the review petition relates of the filing of the review petition and of its substance. The head of the procuring entity may, instead of directly giving notice to all bidders, require such officer to deliver copies of the notice to all the bidders.

(2) Any bidder or governmental authority or any other person whose interests are or could be affected by the review proceedings shall have a right to participate in the review proceedings. A bidder that fails to participate in the review proceedings shall be barred from subsequently making a similar type of claim.

(3) The head of the procuring entity shall, within ten days of the filing of the review petition, and after hearing the petitioner, decide and give notice whether the petition shall be entertained or dismissed. The head of the procuring entity may, by a written order stating the reasons thereof, dismiss the petition if it decides that the petition is manifestly without merit, was not submitted within the time limit set out in section 6, or if the petitioner is without standing.

(4) If the review petition is entertained, the head of the procuring entity shall direct whether the bid process or the entry into force of the procurement contract or framework agreement, as the case may be, is suspended and, if so, the duration of the suspension shall be notified to all parties to the proceedings.

(5) If the review petition is entertained, but the bid process or the entry into force of the procurement contract or framework agreement, as the case may be, is not suspended, the head of the procuring entity shall state the reasons for its decision and notify all the parties to the proceedings of the decision.

(6) Upon issue of notice under sub-section (4) or (5) of this section, as the case may be, the head of the procuring entity shall, after hearing all parties to the review

petition, either in person or through a legal practitioner, and upon considering the material on record, pass such orders as it may deem fit.

(7) If the head of the procuring entity does not give notice to the petitioner as required in sub-section (4) and (5) of this section within the time-limit specified in sub-section (3) of this section, or if the petitioner is not satisfied with the decision so notified, the petitioner may commence appeal proceedings before the Authority under section 24. Where such proceedings are commenced, the competence of the head of the procuring entity to entertain the review petition or continue its proceedings shall cease forthwith.

(8) All decisions of the head of the procuring entity under this section shall be in writing, shall state the action taken and the reasons therefor, and shall promptly be made part of the record of the bid process, together with the review petition received by the head of the procuring entity under this section.

(9) A copy of the order of the head of the procuring entity shall be furnished, within three days of the issuance of the order, to the petitioner, the procuring entity and any bidder or governmental authority that has participated in the review proceedings. In addition, after the order has been issued, the review petition and the order thereon shall be promptly made available for inspection by the general public; provided, however, that no information shall be disclosed if it is classified information or its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition.

Suspension of bid process

8. (1) Upon receipt of a copy of the notice under sub-section (2) of section 6 within the period specified therein, the officer named in such notice shall not take any action that would bring the relevant procurement contract or framework agreement into force; provided that this prohibition shall cease to apply after 15 days of the date of issue of such notice or upon receipt of an order under sub-section (3) or sub-section (5) of section 7, whichever is earlier.

(2) Upon issue of notice by the head of the procuring entity under sub-section (4) of section 7 directing suspension of the bid process or the entry into force of the procurement contract or framework agreement, as the case may be, the officer named in the notice shall suspend, or cause to be suspended, the bid process, including the award of or entering into a procurement contract or framework agreement, in accordance with the provisions of this section.

(3) If the procurement contract or the framework agreement has not entered into force when the notice referred to in sub-section (2) of this section is received, the entry into force of such contract or the performance of such contract, as the case may be, shall remain suspended for a period of fifteen days from the date of notice or such earlier date that the head of the procuring entity may specify.

(4) The head of the procuring entity may extend the suspension provided for in sub-sections (2) and (3) of this section, as the case may be, in order to preserve the rights of the petitioner, or in public interest, pending the disposition of the review proceedings; provided that the total period of suspension shall not exceed 60 days.

(5) The suspension provided for by this section shall not apply if the procuring entity certifies that public interest requires the procurement to proceed urgently. The certification, which shall state the grounds for the finding that such urgency exists and which shall be made a part of the record of the bid process, shall be conclusive with respect to the review proceedings.

(6) Any order of the procuring entity under this section and the grounds and circumstances therefor shall be made part of the record of the bid process.

Delegation of power to review

9. The head of a procurement entity may delegate its power of review under this chapter to one or more officers who are not more than two ranks below such head of the procuring entity, subject to such conditions as may be specified, and any order passed by such officer shall be deemed to be an order passed by the head of the procuring entity:

Provided that the power of review shall not be delegated in cases where the bids have been invited, evaluated or approved by the head of the procuring entity or by an officer who is senior to the officer to whom such power has been delegated under this section.

CHAPTER III

PROCUREMENT REGULATORY AUTHORITY

Constitution of the Department of Procurement Policy

10. (1) The Government shall establish a Department of Procurement Policy (hereinafter referred to as the “Department”) to exercise the powers and discharge the functions assigned to it by this Act and to generally promote probity, transparency, economy, quality and competition in procurement.

(2) The Department shall consist of a Secretary and three Special Secretaries, one each from the disciplines of law, finance and engineering, and such other officers and staff as the Government may determine from time to time:

Provided that the Government may increase the number of Special Secretaries as may be necessary from time to time.

(3) The chairperson of the Authority constituted under section 14 shall be appointed as the Secretary of the Department and the members of the Authority shall be appointed as the Special Secretaries of the Department:

Provided that the Government may by notification declare at any time that the chairperson and members of the Authority shall not be appointed as the secretary and special secretaries respectively of the Department and thereupon appoint other suitable persons as secretary and special secretaries for discharging their respective duties under this Act.

(4) The head office of the Department shall be at Delhi.

Functions of the Department

11. (1) The Department shall discharge the following functions, namely:

(a) prescribe the Procurement Rules for application to all procuring entities or to any particular department, statutory entity or public sector undertaking,

as the case may be, and for procurement of works, goods and services respectively;

- (b) formulate and notify the policies, guidelines and procedures to fulfill the objectives and to carry out the provisions of this Act;
- (c) formulate and notify the standard terms and conditions for different types of procurement contracts and framework agreements for works, goods and services respectively;
- (d) formulate and notify the guidelines for eligibility, pre-qualification and short-listing of bidders;
- (e) formulate and notify the standard bidding documents including pre-qualification documents, procurement contracts and framework agreements for use by different procuring entities;
- (f) set standards for the procurement system and performance standards for the outcomes of procurement contracts and framework agreements;
- (g) promote probity, transparency, economy, quality and competition in procurement;
- (h) formulate and notify the policy and guidelines for introducing and promoting e-procurement as a means of simplified, transparent and competitive procurement;
- (i) promote quality and excellence among vendors and procuring entities;
- (j) set standards for evaluating past performance of bidders;
- (k) set standards that would identify and eliminate conflict of interest in the course of bid process or procurement;
- (l) simplify the procuring systems and processes;

- (m) set standards and procedures for debarring defaulting firms from participating in any bidding process;
- (n) develop and publish instructional literature for use by procuring entities, bidders and vendors;
- (o) promote research and development relating to procurement;
- (p) provide training and take suitable measures to build capacity and foster the development of a professional work force in the respective procuring entities to fulfill the objectives and to carry out the provisions of this Act;
- (q) collect, analyse and disseminate statistics and data relating to procurement;
- (r) any other matter assigned to it by the Government.

(2) The Department may rescind or modify an administrative order or direction of a procuring entity, not being an order of direction in respect of a particular procurement, if such order or direction is contrary to or inconsistent with the provisions of this Act or the rules made thereunder or any policy, guideline or standards issued by it in pursuance of sub-section (1) of this section;

(3) The Department may issue guidelines requiring all public entities, which make grants to non-government entities, to specify as conditions of such grants, the procurement rules, regulations or guidelines that such non-government entities shall follow in expending and audit of those grants.

(4) In discharge of its functions, the Department may engage such experts as may be necessary and undertake such consultations with procuring entities and other stakeholders as it may deem fit.

Non-interference with procuring entities

12. The functions of the Department under this Act shall not be construed to –

- (a) impair or interfere with the determination by procuring entities of their need for, or use of, any works, goods or services, including the specifications thereof; and
- (b) interfere with the specific actions of a procuring entity in the conduct of any particular procurement.

Annual Report of the Department

13. The Department shall, as soon as practicable after the end of each year, make a report on –

- (a) its activities during that year;
- (b) promotion of competition by the procuring entities;
- (c) a brief description and analyses of procurement programmes in which the achievement has fallen below 91 per cent of the physical targets or budgetary appropriations for that year; and
- (d) any other related, incidental or consequential matter,

and shall lay a copy thereof before each House of Parliament and also arrange for the same to be published in such manner as it considers appropriate.

Constitution of the Procurement Regulatory Authority

14. (1) The Government shall, by notification, establish a Procurement Regulatory Authority (hereinafter referred to as the “Authority”) to exercise the powers and discharge the functions assigned to it by this Act.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The Authority shall consist of a chairperson and at least three other members to be appointed by the Government from among the persons recommended by the selection committee referred to in section 17:

Provided that the Government shall appoint such additional members as may be necessary from time to time for enabling the Authority to dispose of the appeals before it within the period specified in sub-section (8) of section 24.

(4) Subject to the provisions of this Act,-

- (a) the jurisdiction of the Authority may be exercised by benches thereof;
- (b) a bench may be constituted by the chairperson with two or more members of the Authority as the chairperson may deem fit:

Provided that every such bench shall include at least one Administrative Member and one Technical Member; and

- (c) the benches shall ordinarily sit at Delhi and such other places as the Government may, in consultation with the chairperson, notify.

(5) Notwithstanding anything contained in sub-section (4) of this section, the chairperson of the Authority may transfer a member of the Authority from one bench to another bench.

Explanation:- For the purposes of this chapter,-

- (i) Administrative Member means the chairperson of the Authority or a member of the Authority having qualifications and experience in the field of law or public administration; and
- (ii) Technical Member means a member of the Authority having qualifications and experience in the field of finance, engineering or procurement of works.

(6) Where benches are constituted, the chairperson of the Authority may, from time to time, by order, make provisions as to the distribution of the business of the

Authority amongst the benches and also provide for the matters which may be dealt with by each bench.

(7) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the chairperson of the Authority may transfer any case pending before one bench, for disposal, to any other bench.

(8) The head office of the Authority shall be at Delhi.

Functions of the Authority

15. (1) The Authority shall discharge the following functions, namely:

- (a) Maintain an oversight on the procurement of works, goods and services by the procurement entities to ensure compliance with the applicable laws, policies, guidelines and procedures;
- (b) examine itself or cause to be investigated, as the case may be, any complaint relating to a procurement under this Act and direct the relevant procuring entity to take such action as may be necessary for conforming to the provisions of this Act;
- (c) hear appeals filed by any bidder or other interested person against an order issued by the head of any procuring entity and after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside such order; and
- (d) discharge such other functions as may be assigned under this Act.

(2) The Authority shall advise the Government on all or any of the following matters, namely:

- (i) Formulation, modification or amendment of the Procurement Rules to fulfill the objectives and to carry out the provisions of this Act;

- (ii) formulation, modification or amendment of the policies, guidelines and procedures to fulfill the objectives and to carry out the provisions of this Act;
- (iii) formulation, modification or amendment of the standard terms and conditions for different types of procurement contracts and framework agreements for works, goods and services respectively;
- (iv) formulation, modification or amendment of the guidelines for eligibility, pre-qualification and short-listing of bidders;
- (v) formulation, modification or amendment of the standard bidding documents including pre-qualification documents, procurement contracts and framework agreements for use by different procuring entities;
- (vi) promotion of competition, transparency, fairness and economy in procurement; and
- (vii) any other matter referred to the Authority by the Government.

(3) The Authority shall ensure transparency while exercising its powers and discharging its functions.

Qualifications for appointment of chairperson and members

16. (1) The chairperson and every member of the Authority shall be a person of ability, integrity and standing, having adequate knowledge of, or experience in, or shown capacity in dealing with, problems relating to procurement, law, public administration or finance, and shall be appointed in the following manner, namely:-

- (a) the chairperson shall be a person having adequate knowledge of, or experience in, the field of procurement, public administration or law;
- (b) one member shall be a person having qualifications and experience in the field of law;

- (c) one member shall be a person having qualifications and experience in the field of finance;
- (d) one member shall be a person having qualifications and experience in the field of engineering or works.

Constitution of Selection Committee

17. (1) The Government shall, for the purposes of selecting the chairperson and members of the Authority constitute a Selection Committee consisting of –

- (a) the Cabinet Secretary..... Chairman;
- (b) the Chief Vigilance Commissioner..... Member;
- (c) Chairperson of the Public Enterprises Selection Board Member;
- (d) a member of the Union Public Service Commission nominated by its chairperson Member
- (e) Secretary-in-charge of the Department of Expenditure of the Central Government who shall also be the convenor of the Selection Committee.

(2) The Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal and six months before the superannuation or end of tenure of the chairperson or member of the Authority, as the case may be, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee shall finalise the selection of the chairperson or member, referred to in sub-section (2), within two months from the date on which the reference is made to it.

(4) The Selection Committee may invite applications and nominations, or identify suitable candidates *suo moto*, and after considering all the candidates, it shall recommend a panel of three persons, in alphabetic order, for every vacancy referred to it.

(5) Before recommending any person for appointment as chairperson or member of the Authority, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions in the Authority.

(6) No appointment of the chairperson or member shall be invalid merely by reason of any vacancy in the Selection Committee:

(7) The panel of names recommended by the Selection Committee shall be considered by an Appointments Committee comprising the Prime Minister, the Union Minister of Finance and the Leader of Opposition in the Lok Sabha which shall select a person from such panel and recommend him for appointment by the President of India.

Terms and conditions of service

18. (1) The chairperson or a member of the Authority shall hold office as such for a term of four years from the date on which he enters upon his office and shall not be eligible for re-appointment:

Provided that no chairperson or member of the Authority shall hold office as such after he has attained the age of sixty-two years.

(2) The salary and allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Authority shall be such as may be prescribed by the Government:

Provided that the salary and allowances or the other terms and conditions of service of the chairperson or a member of the Authority, including housing, transport and other perquisites, shall not be inferior compared to those specified for a Secretary to the Government nor shall they be varied to his disadvantage after appointment.

(3) The chairperson and members of the Authority shall not hold any other office except as specified in Section 10.

Vacancies

19. (1) If, for reason other than temporary absence, any vacancy occurs in the office of the chairperson or member of the Authority, the Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Authority.

(2) No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Authority.

Member to act as chairperson in certain circumstances

20. (1) In the event of the occurrence of any vacancy in the office of the chairperson of the Authority by reason of his death, resignation or otherwise, the senior-most Administrative Member of the Authority shall act as the chairperson until the date on which a new chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the chairperson of the Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Administrative Member of the Authority shall discharge the functions of the chairperson until the date on which the chairperson of the Authority resumes his duties.

Resignation and removal

21. (1) The chairperson or a member of the Authority may, by notice in writing under his hand addressed to the Government, resign his office:

Provided that the chairperson or a member of the Authority shall, unless he is permitted by the Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

(2) The Central Government may, in consultation with the chairperson of the Tribunal, remove from office the chairperson or any other member of the Authority, who-

- (a) has been adjudged an insolvent; or
- (b) has engaged at any time, during his terms of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Government, involves moral turpitude; or
- (d) has become physically or mentally incapable of acting as such chairperson or member of the Authority; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such chairperson or member of the Authority; or
- (f) has so abused his position as to render his continuance in office prejudicial to the public interest.

(3) Notwithstanding anything contained in sub-section (2), no chairperson or member of the Authority shall be removed from his office on the ground specified in clause (e) or clause (f) of sub-section (2) except by an order made by the Government after an inquiry made in this behalf by the chairperson of the Tribunal in which such chairperson or member of the Authority, as the case may be, had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Officers and other employees of the Authority

22. (1) The Government shall provide the Authority with such officers and other employees as it may deem fit.

(2) The officers and other employees of the Authority shall discharge their functions under the general superintendence of the chairperson of the Authority.

(3) The salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees of the Authority shall be such as may be prescribed by the Government.

Finances of the Authority

23. (1) The Authority shall have its own Fund.

(2) There shall be paid into the Fund of the Authority -

- (a) any grants and loans made by the Government;
- (b) all fees or other revenues received in accordance with the provisions of this Act; and
- (c) all sums received from such other sources as may be decided upon by the Government.

(3) The expense of the Authority shall be paid out of the Consolidated Fund of India to the extent that such payment is necessary to meet its expense after taking into account other revenues of the Authority.

(4) The expense of the Authority shall include -

- (a) the remuneration of, and any travelling or other allowances payable to its members, officers, consultants and staff;
- (b) all expenses duly incurred in the exercise, performance and discharge of its powers, duties and functions under this Act; and
- (c) the expenses incurred in connection with the objects and for purposes of this Act.

(5) The Authority shall prepare, in such form and in such manner and at such time in each year as may be prescribed, its budget for the next financial year, showing its estimated receipts and expenditure and forward the same to the Parliament, through the Government, for approval.

(6) The Authority shall incur expenditure subject to the budget approved by the Parliament and may seek re-appropriation thereof or supplementary grants thereto as may be necessary.

(7) Upon approval of the budget by the Parliament, the total amount so approved for the year shall be transferred by the Government to the Fund of the Authority and the Authority shall be accountable to the Parliament and the Comptroller and Auditor-General of India for utilisation thereof.

(8) The Comptroller and Auditor-General shall examine the accounts of the Authority and furnish a report in accordance with sub-section (9) of this section-

- (a) stating whether it has or has not obtained all the information and explanations required by it;
- (b) stating whether the accounts referred to in the report are properly drawn up so as to exhibit a true and fair view of the affairs of the Authority; and
- (c) drawing attention to any item in the accounts which in its opinion may be of interest in any examination of the activities and accounts of the Authority.

Provided that the report of the Comptroller and Auditor-General of India shall be prepared only with respect to the matters relating to expenses and not with respect to policy review of regulatory decisions and orders passed by the Authority.

(9) The accounts of the Authority, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Government which shall cause the same to be laid, as soon as may be after it is received, before each House of Parliament.

(10) The Comptroller and Auditor-General of India and any person appointed by him in connection with the auditing of the accounts of the Authority under this Act shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government

accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

Appeal before the Authority

24. (1) Subject to sub-section (3) of this section, any person aggrieved by an order made by the head of the procuring entity on a review petition filed under the provisions of section 6, or upon failure of the head of the procuring entity to issue an order within the period specified in sub-section (3) of section 6 or sub-section (3) of section 7, as the case may be, may prefer an appeal before the Authority.

(2) An appeal under sub-section (1) of this section shall be filed within a period of fifteen days from the date on which a copy of the order made by the head of a procuring entity is received by such person or from the date on which the period specified in sub-section (3) of section 6 or sub-section (3) of section 7 expires, as the case may be, and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed.

Provided that the Authority may entertain an appeal after the expiry of the said period of fifteen days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(3) No later than five days from the date of receipt of the appeal, the Authority shall:

- (a) notify the procuring entity and, through the procuring entity, all bidders participating in the bid process to which the appeal relates of the appeal and its substance;
- (b) suspend or decide not to suspend the bid process, the entry into force of the procurement contract or framework agreement or the performance of a procurement contract or the operation of a framework agreement, as the case may be, in accordance with clauses (c) and (d) of this sub-section, and notify the same to the procuring entity and, through the procuring entity, all

bidders participating in the bid process to which the appeal relates of its decision; and

- (c) where it decides to suspend any process or contract under clause (b) of this sub-section, specify the period of the suspension for as long as it finds the suspension necessary to protect the interests of the appellant, unless it decides that urgent public interest considerations require the bid process, the procurement contract or the framework agreement, as the case may be, to proceed. The Authority may also order that any suspension applied be extended or lifted, taking into account the aforementioned considerations; and
- (d) where it decides not to suspend any process or contract under clause (b) of this sub-section, provide the reasons for its decision to the appellant, the procuring entity and all bidders.

(4) The Authority may dismiss the appeal, and shall lift any suspension applied, where it decides that:

- (a) The appeal is manifestly without merit or was not presented in compliance with the time-limit set out in sub-section (2) of this section; or
- (b) the appellant is without standing,

and shall promptly notify the appellant, the procuring entity and all bidders participating in the bid process of the dismissal and reasons therefor and that any suspension in force is lifted.

(5) Promptly upon receipt of notice from the Authority, the procuring entity shall provide the Authority with access to all documents, or the true copies thereof, relating to the bid process in its possession.

(6) In taking its decision on an appeal that it has entertained, the Authority may declare the legal rules or principles that govern the subject matter of the appeal, shall address any suspension in force, and shall take one or more of the following actions, as appropriate:

- (a) Prohibit the procuring entity from acting, taking a decision or following a procedure that is not in compliance with the provisions of this Act, the rules made thereunder or any direction or order issued thereunder;
- (b) require the procuring entity that has acted or proceeded in a manner that is not in compliance with the provisions of this Act or the rules, directions or orders thereunder, to act, to take a decision or to proceed in a manner that is in compliance with the provisions of this Act and the rules, directions or orders thereunder;
- (c) overturn in whole or in part an act or a decision of the procuring entity that is not in compliance of the provisions of this Act or the rules, directions or orders thereunder;
- (d) modify a decision by the procuring entity that is not in compliance with the provisions of this Act or the rules, directions or orders thereunder;
- (e) confirm a decision of the procuring entity;
- (f) overturn the award of a procurement contract or a framework agreement that has entered into force in a manner that is not in compliance with the provisions of this Act or the rules, directions or orders thereunder; and, if notice of the award of the procurement contract or the framework agreement has been published, order the publication of notice of the overturning of the award;
- (g) order that the bid process be terminated;
- (h) dismiss the appeal; and
- (i) pass such other order as is appropriate in the circumstances.

(7) All decisions of the Authority under this section shall be in writing, shall state the action taken and the reasons therefor, and shall promptly be communicated to all parties to the appeal and made part of the record of the bid process, together with the appeal received by the under this section.

(8) An appeal filed under this section shall be dealt with as expeditiously as possible and endeavour shall be made by the Authority to dispose of the appeal finally within sixty days from the date of receipt of the petition.

(9) Where any appeal can not be disposed off within the period of sixty days specified in sub-section (8) of this section, the Authority shall record its reasons in writing for not disposing of the appeal within the said period and shall endeavour to dispose off the appeal finally within a further period not exceeding sixty days.

(10) The Authority may authorise any person, as it deems fit, to represent the interest of the users or consumers, if any, in the proceedings before it.

(11) No information shall be disclosed in appeal proceedings and no public hearing shall take place if doing so would impair the protection of national security interests, cause disclosure of classified information, impede law enforcement, prejudice the legitimate commercial interests of the bidders, impede fair competition or contravene any law.

(12) Without prejudice to the foregoing provisions of this section, the Authority may require the payment of compensation for any reasonable costs incurred by the appellant as a result of an act or decision of, or procedure followed by, the procuring entity, which is not in compliance with the provisions of this Act or the rules, directions or orders thereunder, and for any loss or damages suffered, which shall be limited to the costs of preparation of the bid, or the costs relating to the appeal, or both.

(13) The order of the Authority shall be final unless it is modified or set aside in an appeal filed under section 130.

Certain rules to apply to appeal proceedings

25. (1) After the filing of an appeal under section 24, the Authority shall, within five days of such filing, give notice to the procuring entity and to all bidders participating in the bid process to which the appeal relates of the filing of the appeal and of its substance.

(2) Any bidder or governmental authority whose interests are or could be affected by the appeal proceedings shall have a right to participate in the appeal proceedings. A bidder that fails to participate in the appeal proceedings shall be barred from subsequently making any similar type of claim.

(3) A copy of all orders of the Authority in the appeal proceedings shall be furnished, within three days after the issuance of the order, to the appellant, the procuring entity and any bidder or governmental authority that has participated in the appeal proceedings. In addition, after the order has been issued, the appeal and the order thereon shall be promptly made available for inspection by the general public, provided, however, that no information shall be disclosed if it is classified information or its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition.

Suspension of bid process and procurement contract

26. (1) Upon issue of notice by the Authority under sub-section (3) of section 24 to suspend the bid process, the entry into force of the procurement contract or the framework agreement, the performance of the procurement contract or the operation of the framework agreement, as the case may be, the procuring entity shall suspend, or cause to be suspended, such bid process, the performance of such procurement contract or the operation of the framework agreement.

(2) No order for suspension of the bid process, performance of the procurement contract or operation of the framework agreement, as the case may be, or any other interim order that causes delay in such bid process or procurement shall be issued unless the person seeking such order has given an undertaking to the Authority that upon final disposal of the case by the Authority, he shall be liable to compensate the affected bidder or the procuring entity, as the case may be, for any loss or damage incurred by it as a consequence of such suspension or other interim order if it is held by the Authority that the plea for such suspension or interim order was frivolous, malafide or lacking in sufficient ground. The compensation payable under this sub-section shall be determined

by the Authority in a separate order to be issued after hearing the affected parties and may extend to ten per cent of the likely contract value of the procurement.

(3) Any order by the Authority under this section and the grounds and circumstances therefor shall be made part of the record of the bid process.

Review by the Authority

27. The Authority may, *suo moto* or on a complaint made by any person on grounds of violation of law or prejudice to public interest, and after hearing the procuring entity and any other person affected by a bid process, procurement contract or framework agreement, as the case may be, pass such orders under section 24 as it may deem fit, requiring the procuring entity to perform its statutory duties under this Act.

Procedure and powers of the Authority

28. (1) All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Authority shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

(2) The Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Authority shall have powers to regulate its own procedure.

(3) Subject to the provisions of sub-section (2) of section 26, the Authority shall have the powers to pass such interim order in any proceeding, hearing or matter before the Authority, as it may consider appropriate.

(4) The Authority shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 122 and 123 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing an appeal for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (i) any other matter which may be prescribed.

(5) An order made by the Authority under this Act shall be executable by the Authority as a decree of civil court and for this purpose, the Authority shall have all the powers of a civil court.

(6) Notwithstanding anything contained in sub-section (5), the Authority may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Decision to be by majority

29. If the members of a bench consisting of two members of the Authority differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the chairperson of the Authority who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Authority and such point or points shall be decided according to the opinion of the majority of the members of the Authority who have heard the case, including those who first heard it.

Proceedings of the Authority

30. (1) The Authority shall meet at the head office or any other place at such time as the chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.

(2) The chairperson, or if he is unable to attend a meeting of the Authority, the senior-most Administrative Member of the Authority shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes of the members present and voting, and in the event of an equality of votes, the chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) Save as otherwise provided in sub-section (3), every member shall have one vote.

(5) All orders and decisions of the Authority shall be authenticated by an officer of the Authority duly authorised by the chairperson in this behalf.

Power of the Authority to call for records

31. Notwithstanding anything contained in this Act or in any other law for the time being in force, the Authority may at any time, for securing compliance with the provisions of this Act, require any procuring entity;-

- (a) to produce records relating to or in connection with any bid process;
- (b) to furnish the bidding documents, estimates, statements, accounts or statistics relating to such bids; and
- (c) to furnish any report;

and the said procuring entity shall furnish the same as early as may be.

Powers of entry and seizure

32. Any officer, not below the rank of a gazetted officer of the Government or an equivalent thereof, specially authorised in this behalf by the Authority, may enter any building or place where he has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, insofar as it may be applicable.

Assistance of legal practitioners and presenting officers

33. (1) A person preferring a review petition under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Authority, as the case may be.

(2) The Authority may, on an application of any appellant, authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Authority, as the case may be.

Delegation

34. The Authority may, by general or special order in writing, delegate to any member or officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions, excluding the power to hear appeals or review orders, under this Act as it may deem necessary.

Procurement Advisory Committee

35. (1) The Authority may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Procurement Advisory Committee.

(2) The Procurement Advisory Committee shall consist of not more than thirty-one members to represent the interests of procuring entities, commerce, industry,

transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies having interest in procurement related matters.

(3) The chairperson of the Authority shall be the ex-officio Chairperson of the Procurement Advisory Committee and members of the Authority shall be the ex-officio members of the Committee.

(4) The Procurement Advisory Committee shall determine its own rules of business and may constitute sub-committees, undertake consultations with experts and stakeholders or take such other actions as may be necessary for furtherance of its objectives.

Objects of Procurement Advisory Committee

36. The objects of the Procurement Advisory Committee shall be to advise the Authority on:

- (i) procurement rules and policy;
- (ii) matters relating to quality, efficiency, competition, integrity, fairness and transparency in public procurement;
- (iii) initiatives aimed at improving the processes and outcomes of procurement;
- (iv) initiatives aimed at ensuring best value for money in procurement;
- (v) measures to improve the capacity of procuring entities;
- (vi) measures to achieve the public policy objectives relating to procurement;
- (vii) initiatives for improving the overall standards of performance by vendors;
and
- (viii) innovative initiatives to improve procurement.

Annual Report of the Authority

37. (1) The Authority shall, as soon as practicable after the end of each year, make to the government a report on its activities during that year.

(2) Every such report shall include -

- (a) a general survey of developments during the year to which the annual report relates in respect of matters falling within the scope of the Authority's functions;
- (b) a review of the progress of work during the previous year as compared to the annual plan of such year;
- (c) a summary of enforcement orders to procuring entities, final or provisional decisions along with the status of compliance thereof;
- (d) details of general directions given to the Authority during that year by the Government;
- (e) a general survey of the activities of the Procurement Advisory Committee during the year, and
- (f) such other matters as the Government may in consultation with the Authority, from time to time require.

(3) The Authority shall, before the commencement of each year, make to the Government a report on the annual plan for the year containing a general description of work, other than that comprising routine activities in the exercise of its functions, which it plans to undertake during the year in furtherance of its objectives and the outcomes the Authority expects to achieve during that year.

(4) The Authority shall, before finalising the annual plan referred to in sub section (3) of this section, publish a draft thereof and provide 60 days notice for inviting representations and objections from the Government, procuring entities, vendors, other interested parties and the public, and upon receipt of such representation, comments and observations and objections, shall consider the same.

(5) The Government shall lay a copy of every report made by the Authority under sub section (1) and (3) of this section before each House of Parliament and shall arrange for copies of every such report to be published in such manner as it considers appropriate.

(6) The Authority shall also make to the Government-

- (a) such reports with respect to matters mentioned in clause (a) of sub section (2) of this section as the Government may from time to time require; and
- (b) such other reports with respect to those matters as may appear to it to be expedient, and the Authority shall, if the Government so directs, arrange for copies of any report made under this sub section to be published in such manner as is stipulated in the direction.

(7) Upon presentation of the documents referred to in sub section (1) of this section, or at any other time, the Parliament or a committee thereof may require written replies from, or the presence of, the chairperson and members of the Authority in connection with any investigation, debate or discussion with respect to the powers exercised or functions performed by the Authority and the Authority shall provide such information and render such assistance to the Parliament as may be necessary.

(8) No order of the Authority which is appealable under the applicable law shall be called to question in the Parliament.

Directions by Central Government

38. (1) In the discharge of its functions, the Authority shall be guided by such directions in matters of policy involving public interest as the government may give to it in writing.

Provided that such directions shall be general in nature and not relate to specific regulatory decisions or orders of the Authority.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Government thereon shall be final.

CHAPTER IV

GENERAL PRINCIPLES AND PROCEDURES OF PROCUREMENT

Communications in procurement

39. (1) Any document, notification, decision or any other information generated in the course of a procurement and communicated as required by this Act, including in connection with review and appeal proceedings or in the course of a meeting, or forming part of the record of bid process, shall be in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference.

(2) Where necessary or expressly permitted by the procuring entity, communication of information between bidders and the procuring entity may be made by means that do not provide a record of the content of the information on the condition that, immediately thereafter, confirmation of the communication is given to the recipient of the communication in a form that provides a record of the content of the information and that is accessible so as to be usable for subsequent reference.

(3) The procuring entity, when inviting the participation of bidders in the bid process, shall specify, as may be necessary in the circumstances of each case:

- (a) any requirement of form;
- (b) in procurement involving classified information, if the procuring entity considers it necessary, measures and requirements needed to ensure the protection of classified information at the requisite level;
- (c) the means to be used to communicate information by or on behalf of the procuring entity to a bidder or to any person, or by a bidder to the procuring entity or other entity acting on its behalf; or
- (d) the means to be used to satisfy all requirements under this Act for information to be in writing or for a signature.

(4) The procuring entity may use only those means of communication that are in common use by bidders in the context of the particular procurement.

(5) The procuring entity shall put in place appropriate measures to secure the authenticity, integrity and confidentiality of information concerned.

Participation by bidders

40. (1) Except when authorised or required to do so by this Act, the Procurement Rules or the provisions of any law for the time being in force, the procuring entity shall establish no other requirement aimed at limiting participation of bidders in the bid process that discriminates against or among bidders or against categories thereof.

(2) The procuring entity, when first inviting the participation of bidders in the bid process, shall declare whether participation of bidders in the bid process is limited pursuant to this section and on which ground. Any such declaration may not later be altered.

(3) A procuring entity that decides to limit participation of bidders in the bid process pursuant to this section shall include in the record of the bid process a statement of the reasons and circumstances on which it relied.

(4) The procuring entity shall make available to any person, upon request, its reasons for limiting participation of bidders in the bid process pursuant to this section.

Qualifications of bidders

41. (1) This section applies to the ascertainment by the procuring entity of the qualifications of bidders at any stage of the bid process.

(2) Bidders shall meet such of the following criteria as the procuring entity considers appropriate and relevant in the circumstances of the particular procurement:

- (a) That they have the necessary professional, technical and environmental qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and the personnel to perform the procurement contract;
- (b) that they meet the relevant ethical and other standards;
- (c) that they have legal capacity to enter into the procurement contract;
- (d) that they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial officer, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing;
- (e) that they have not, and their directors or officers have not, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of two years preceding the commencement of the bid process, or have not been otherwise disqualified pursuant to administrative suspension or debarment proceedings; and
- (f) that in case the services to be procured are in the nature of intellectual, advisory or consultancy services, the personnel who will be engaged in providing such services have the necessary qualifications, experience and professional competence, and the manner in which such personnel shall be evaluated in the course of evaluation of the submissions.

(3) Subject to the right of bidders to protect their intellectual property or trade secrets, the procuring entity may require bidders participating in bid process to provide appropriate documentary evidence or other information to satisfy itself that the bidders are qualified in accordance with the criteria referred to in sub-section (2) of this section.

(4) Any requirement established pursuant to this section shall be set out in the pre-qualification or pre-selection documents, if any, and in the bidding documents, and

shall apply equally to all bidders. A procuring entity shall impose no criterion, requirement or procedure with respect to the qualifications of bidders other than those provided for in this Act.

(5) The procuring entity shall evaluate the qualifications of bidders in accordance with the qualification criteria and procedures set out in the pre-qualification or pre-selection documents, if any, and in the bidding documents.

(6) Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with section 40, the procuring entity shall establish no criterion, requirement or procedure with respect to the qualifications of bidders that discriminates against or among bidders or against categories thereof, or that is not objectively justifiable.

(7) Notwithstanding sub-section (6) of this section, the procuring entity may require the legalisation of documentary evidence provided by the bidder presenting the successful bid so as to demonstrate its qualifications for the particular procurement.

- (8) (a) The procuring entity shall disqualify a bidder if it finds at any time that the information provided concerning the qualifications of the bidder was false or constituted a misrepresentation.
- (b) A procuring entity may disqualify a bidder if it finds at any time that the information provided concerning the qualifications of the bidder was materially inaccurate or materially incomplete.
- (c) Other than in a case to which clause (a) of this sub-section applies, a procuring entity may not disqualify a bidder on the ground that information provided concerning the qualifications of the bidder was inaccurate or incomplete in a non-material respect. The bidder may, however, be disqualified if it fails to remedy such deficiencies promptly upon request by the procuring entity.

- (d) The procuring entity may require a bidder that was pre-qualified in accordance with section 49 to demonstrate its qualifications again in accordance with the same criteria used to pre-qualify such bidder. The procuring entity shall disqualify any bidder that fails to demonstrate its qualifications again if requested to do so. The procuring entity shall promptly notify each bidder requested to demonstrate its qualifications again as to whether or not the bidder has done so to the satisfaction of the procuring entity.

(9) The procuring entity shall complete the qualification process with respect to each bidder within a reasonable time, but no later than 90 days from the deadline for presenting the submissions by the bidders:

Provided that for reasons to be recorded in writing and communicated to all bidders before expiry of the said 90 days, the procuring entity may extend the aforesaid period by upto 60 days and in the event the qualification process is not completed within such extended period, the submissions presented by the bidders shall lapse, and may be re-submitted, with or without modifications, by the respective bidders only in response to a fresh invitation, if any.

Description of the subject matter and the terms of the procurement

42. (1) (a) The pre-qualification or pre-selection documents, if any, shall set out a description of the subject matter of the procurement.

(b) The procuring entity shall set out in the bidding documents the detailed description of the subject matter of the procurement that it will use in the examination of proposals and bids, including the minimum requirements that the proposals and bids must meet in order to be considered responsive and the manner in which those minimum requirements are to be applied.

(2) Other than any criterion, requirement or procedure that may be imposed by the procuring entity in accordance with section 40, no description of the subject matter of a procurement that may restrict the participation of bidders in or their access to the bid

process shall be included or used in the pre-qualification or pre-selection documents, if any, or in the bidding documents.

(3) The description of the subject matter of the procurement may include, *inter alia*, specifications, plans, drawings, designs, requirements, testing and test methods, packaging, marking or labelling or conformity certification, and symbols and terminology.

(4) To the extent practicable, the description of the subject matter of the procurement shall be objective, functional and generic, and shall set out the relevant technical, quality and performance characteristics of that subject matter. There shall be no requirement for or reference to a particular trademark or trade name, patent, design or type, specific origin or producer unless there is no sufficiently precise or intelligible way of describing the characteristics of the subject matter of the procurement and provided that words such as "or equivalent" are included.

(5) (a) Standardised features, requirements, symbols and terminology relating to the technical, quality and performance characteristics of the subject matter of the procurement shall be used, where available, in formulating any description of the subject matter of the procurement to be included in the pre-qualification or pre-selection documents, if any, and in the bidding documents;

(b) Due regard shall be had for the use of standardised trade terms and standardised conditions, where available, in formulating the terms and conditions of the procurement and the procurement contract or the framework agreement to be entered into in the bid process, and in formulating other relevant aspects of the pre-qualification or pre-selection documents, if any, and the bidding documents.

Evaluation criteria and procedures

43. (1) Except for the criteria set out in sub-section (3) of this section, the evaluation criteria shall relate to the subject matter of the procurement.

- (2) The evaluation criteria 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 the 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 the procurement; and
 - (c) where relevant, the experience, reliability and professional and technical competence of the bidder and of the personnel to be involved in providing the subject matter of the procurement.
- (3) In addition to the criteria set out in sub-section (2), the evaluation criteria may include:
 - (a) Any criteria that the Procurement Rules or other applicable laws authorise or require to be taken into account;
 - (b) a margin of preference for the benefit of domestic bidders or domestically produced goods, or any other preference in furtherance of the socio-economic policies of the Government, if authorised or required by the Procurement Rules or other provisions of applicable laws. The margin of preference shall be calculated in accordance with the Procurement Rules and shall in no case exceed fifteen per cent of the contract value.
- (4) To the extent practicable, all non-price evaluation criteria shall be objective, quantifiable and expressed in monetary terms.
- (5) The procuring entity shall set out in the bid documents:

- (a) Whether the successful bid will be ascertained on the basis of price or on other criteria;
- (b) all evaluation criteria established pursuant to this section, including price as modified by any preference;
- (c) the relative weights of all evaluation criteria, except where the procurement is conducted under section 98, in which case the procuring entity may list all evaluation criteria in descending order of importance; and
- (d) the manner of application of the criteria in the evaluation procedure.

(6) Notwithstanding anything to the contrary contained in this section, where bids are invited for a not-for-profit supply of the subject matter of the procurement or for supply from a not-for-profit entity, the evaluation criteria for determining the successful bid may, at the discretion of the head of the procuring entity, be specified in terms of selected non-financial parameters relevant to the subject matter of the procurement.

(7) In evaluating bids and determining the successful bid, the procuring entity shall use only those criteria and procedures that have been set out in the bidding documents, and shall apply those criteria and procedures in the manner that has been disclosed in those bidding documents. No criterion or procedure shall be used that has not been set out in accordance with this provision.

Estimation of the value of procurement

44. (1) A procuring entity shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to limit competition among bidders or otherwise avoid its obligations under this Act.

(2) In estimating the value of procurement, the procuring entity shall include the estimated maximum total value of the procurement contract or of all procurement contracts envisaged under a framework agreement over its entire duration, taking into account all forms of remuneration.

The manner, place and deadline for presenting submissions

45. (1) The manner, place and deadline for presenting submissions shall be set out in the pre-qualification or pre-selection documents, if any and in the bidding documents.

(2) Deadlines for presenting submissions shall be expressed as a specific date and time and shall allow sufficient time for bidders to prepare and present their submissions, taking into account the reasonable needs of the procuring entity.

(3) If the procuring entity issues a clarification or modification of the pre-qualification or pre-selection documents, if any, or the bidding documents, it shall, prior to the applicable deadline for presenting submissions, extend the deadline if necessary or as required under sub-section (3) of section 46, in order to afford bidders sufficient time to take the clarification or modification into account in their submissions.

(4) The procuring entity may, in its absolute discretion, prior to a deadline for presenting submissions, extend the applicable deadline if it is not possible for one or more bidders to present their submissions by the deadline initially stipulated, because of any circumstance beyond their control.

(5) Notice of any extension of the deadline shall be given promptly to each bidder to which the procuring entity provided the pre-qualification, pre-selection or bidding documents.

Clarifications and modifications of bidding documents

46. (1) A bidder may request a clarification of the bidding documents from the procuring entity. The procuring entity shall respond to any request by a bidder for clarification of the bidding documents that is received by the procuring entity within a reasonable time prior to the deadline for presenting submissions. The procuring entity shall respond within a time period that will enable the bidder to present its submission in timely fashion and shall, without identifying the source of the request, communicate the clarification to all bidders to which the procuring entity has provided the bidding documents. If the response to a request for clarification does not involve a modification

in the bidding documents or an interpretation or clarification that is material for presenting submissions, the same need not be conveyed by the procuring entity to all the bidders.

(2) At any time prior to the deadline for presenting submissions, the procuring entity may, for any reason, whether on its own initiative or as a result of a request for clarification by a bidder, modify the bidding documents by issuing an addendum. The addendum shall be communicated promptly to all the bidders to which the procuring entity has provided the bidding documents and shall be binding on those bidders.

(3) If as a result of a clarification or modification issued in accordance with this section, the information published when first inviting the participation of bidders in the bid process becomes materially inaccurate, the procuring entity shall cause the amended information to be published in the same manner and place in which the original information was published, and shall extend the deadline for presentation of submissions as provided for in sub-section (3) of section 45.

(4) If the procuring entity convenes a meeting of bidders, it shall prepare minutes of the meeting containing all material requests submitted at the meeting for clarification of the bidding documents, and its responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all bidders to which the procuring entity provided the bidding documents, so as to enable those bidders to take the minutes into account in preparing their submissions.

Clarification of qualification, information and of submissions

47. (1) At any stage of the bid process, the procuring entity may ask a bidder for clarifications of its qualification information or of its submission, in order to assist in the ascertainment of qualifications or the examination and evaluation of submissions.

(2) The procuring entity shall correct purely arithmetical errors that are discovered during the examination of submissions. The procuring entity shall give prompt notice of any such correction to the bidder that presented the submission concerned.

(3) No substantive change to qualification information, and no substantive change to a submission (including changes aimed at making an unqualified bidder qualified or an unresponsive submission responsive) shall be sought, offered or permitted.

(4) No negotiations shall take place between the procuring entity and a bidder with respect to qualification information or submissions, nor shall any change in price be made, pursuant to a clarification that is sought under this section.

(5) Sub-section (4) of this section shall not apply to proposals submitted under sections 98, 99, 100 and 101.

(6) All communications pursuant to this section shall be included in the record of the bid process.

Bid securities

48. (1) When the procuring entity requires bidders presenting submissions to provide a bid security:

- (a) The requirement shall apply to all bidders, with such exceptions as may be prescribed;
- (b) the bidding documents may stipulate that the issuer of the bid security and the confirmer, if any, of the bid security, as well as the form and terms of the bid security, must be acceptable to the procuring entity;
- (c) the procuring entity shall specify in the bidding documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required bid security;
- (d) the procuring entity shall specify in the bidding documents any requirement that refers directly or indirectly to the conduct of the bidder presenting the submission and such requirement may relate only to:

- (i) Withdrawal or modification of the submission after the deadline for presenting submissions, or before the deadline if so stipulated in the bidding documents;
 - (ii) failure to sign a procurement contract if so required by the bidding documents; and
 - (iii) failure to provide a required security for the performance of the contract after the successful submission has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the bidding documents; and
- (e) prior to presenting a submission, a bidder may request the procuring entity to confirm the acceptability of a proposed issuer of a bid security, or of a proposed confirmer, if required, and the procuring entity shall respond promptly to such a request.

(2) The procuring entity shall make no claim to the amount of the bid security, and shall promptly return, or procure the return of, the security document after the earliest of the following events:

- (a) The expiry of the bid security;
- (b) the entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the bidding documents;
- (c) the cancellation of the procurement; or
- (d) the withdrawal of a submission prior to the deadline for presenting submissions, unless the bidding documents stipulate that no such withdrawal is permitted.

Pre-qualification process

49. (1) The procuring entity may engage in pre-qualification process with a view to identifying, prior to inviting bids, the bidders that are qualified. The provisions of section 41 shall apply to the pre-qualification process.

(2) If the procuring entity engages in pre-qualification process, it shall cause an invitation to pre-qualify to be published in one prominent newspaper, one industry publication or professional journal and the relevant website of the Government or in such manner as may be prescribed.

(3) The invitation to pre-qualify shall include the following information:

- (a) The name and address of the procuring entity;
- (b) a summary of the principal required terms and conditions of the procurement contract or the framework agreement to be entered into in the bid process, including the nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the construction to be effected, or the nature of the services and the location where they are to be provided, as well as the desired or required time for the supply of the goods, for the completion of the construction, or for the provision of the services;
- (c) the criteria and procedures to be used for ascertaining the qualifications of bidders, in conformity with section 41;
- (d) the means of obtaining the pre-qualification documents and the place where they may be obtained;
- (e) the price, if any, to be charged by the procuring entity for the pre-qualification documents and, subsequent to pre-qualification, for the bidding documents;

- (f) if a price is charged, the means of payment for the pre-qualification documents and, subsequent to pre-qualification, for the bidding documents; and
- (g) the manner, place and deadline for presenting submissions, in conformity with section 45.

(4) The procuring entity shall provide a set of pre-qualification documents to each bidder that requests them in accordance with the invitation to pre-qualify and that pays the price, if any, charged for those documents. The price that the procuring entity may charge for the pre-qualification documents shall ordinarily reflect the cost of providing them to bidders.

Provided that if such pre-qualification documents are downloaded by any bidder from the website notified by the procuring entity, it shall pay the price thereof in such manner as may be specified therein.

- (5) The pre-qualification documents shall include the following information:
 - (a) Instructions for preparing and presenting pre-qualification applications;
 - (b) any documentary evidence or other information that must be presented by bidders to demonstrate their qualifications;
 - (c) the name, designation and address of one or more officers of the procuring entity who are authorised to communicate directly with and to receive communications directly from bidders in connection with the pre-qualification process, without the intervention of an intermediary;
 - (d) references to this Act, the Procurement Rules and other laws directly pertinent to the pre-qualification process; and
 - (e) any other requirements that may be established by the procuring entity in conformity with this Act and the Procurement Rules relating to the

preparation and presentation of applications to pre-qualify and to the pre-qualification process.

(6) The procuring entity shall respond to any request by a bidder for clarification of the pre-qualification documents that is received by the procuring entity within a reasonable time prior to the deadline for presenting applications to pre-qualify. The procuring entity shall respond within a time period that will enable the bidder to present its application to pre-qualify in timely fashion. The response to any request that might reasonably be expected to be of interest to other bidders shall, without identifying the source of the request, be communicated to all bidders to which the procuring entity has provided the pre-qualification documents.

(7) The procuring entity shall take a decision with respect to the qualifications of each bidder presenting an application to pre-qualify. In reaching that decision, the procuring entity shall apply only the criteria and procedures set out in the invitation to pre-qualify and in the pre-qualification documents.

(8) The procuring entity shall complete the pre-qualification process with respect to each bidder within a reasonable time, but no later than 90 days from the deadline for submitting the application to pre-qualify:

Provided that for reasons to be recorded in writing and communicated to all bidders before the expiry of the said 90 days, the procuring entity may extend the aforesaid period by upto 60 days and in the event the pre-qualification process is not completed within such extended period, the applications to pre-qualify shall lapse, and may be re-submitted, with or without modifications, by the respective bidders only in response to a fresh invitation, if any.

(9) Only bidders that have been pre-qualified are entitled to participate further in the procurement process.

(10) The procuring entity shall promptly notify each bidder presenting an application to pre-qualify whether or not it has been pre-qualified. It shall also make

available to any person, upon request, the names of all bidders that have been pre-qualified.

(11) The procuring entity shall promptly communicate to each bidder that has not been pre-qualified the reasons therefor.

Cancellation of the procurement

50. (1) The procuring entity may cancel the procurement at any time prior to the acceptance of the successful bid and, after the successful bid was accepted, in the circumstances referred to in sub-section (8) of section 54. The procuring entity shall not open any bids or proposals after taking a decision to cancel the procurement.

(2) The decision of the procuring entity to cancel the procurement and reasons for the decision shall be included in the record of the bid process and promptly communicated to all bidders that participated in the bid process. The procuring entity shall promptly return any bids or proposals that remain unopened at the time of the decision to the bidders that presented them.

(3) Unless the cancellation of the procurement was a consequence of irresponsible or dilatory conduct on the part of the procuring entity, the procuring entity shall incur no liability, solely by virtue of its invoking sub-section (1) of this section, towards bidders that have presented submissions.

Provided that in the event a bid process is annulled for insufficient cause and for reasons not attributable to any or all the bidders, the procuring entity shall pay to each bidder, by way of a pre-determined compensation for the costs incurred on presentation of a bid, an amount equal to ten per cent of the bid security deposited by such bidder in the course of the bid process.

Rejection of abnormally low bids

51. (1) The procuring entity may reject a bid if the procuring entity has determined that the price in combination with other constituent elements of the bid is abnormally low

in relation to the subject matter of the procurement and raises concerns with the procuring entity as to the ability of the bidder that presented that bid to perform the procurement contract, provided that the procuring entity has taken the following actions:

- (a) The procuring entity has requested in writing from the bidder details of the bid that gives rise to concerns as to the ability of the bidder to perform the procurement contract; and
- (b) the procuring entity has taken account of any information provided by the bidder following this request, and the information included in the bid, but continues, on the basis of all such information, to hold concerns.

(2) The decision of the procuring entity to reject a submission in accordance with this section, and the reasons for that decision, and all communications with the bidders under this section, shall be included in the record of the bid process. The decision of the procuring entity and the reasons therefor shall be promptly communicated to the bidder concerned.

Exclusion of bidders for offering inducements

52. (1) The procuring entity shall exclude a bidder from the bid process, if the bidder gives or agrees to give, directly or indirectly, to any current or former officer or employee of the procuring entity or other governmental authority any undue gain in the form of a gratuity, an offer of employment or any other thing of service or value, as an inducement with respect to an act or decision of, or procedure followed by, the procuring entity in connection with the bid process.

(2) Any decision of the procuring entity to exclude a bidder from the bid process under this section and the reasons therefor shall be included in the record of the bid process and promptly communicated to the bidder concerned.

Exclusion of bidders for conflict of interest

53. (1) Every bidder shall make full disclosure of any conflict of interest that it has or is likely to have with any service provider, adviser, consultant, employee or agent of

the procuring entity or with any other bidder participating in the bid process, or with respect to any other contract or relationship that the bidder has or is likely to have with the procuring entity or its adviser, consultant, employee or agent.

(2) If a bidder has an unfair competitive advantage that will significantly reduce or subvert fair competition in the bid process, it will be deemed to have a conflict of interest under sub-section (1) of this section and the provisions of that sub-section shall apply *mutatis mutandis* to such a case.

(3) Every vendor shall make full disclosure of any conflict of interest that may arise from time to time during the performance of its procurement contract or the operation of its framework agreement, as the case may be, and shall make best efforts to eliminate the conflict in such manner as may be appropriate in the circumstances of the case.

(4) Where the procuring entity determines *suo moto* or on a declaration under sub-section (1), (2) or (3) of this section that a bidder or vendor, as the case may be, is encumbered by a conflict of interest under those sub-sections, it shall exclude the bidder from the bid process or suspend the procurement contract or framework agreement of the vendor, as the case may be. Provided, however, that the procuring entity may, for reasons to be recorded in writing, condone any conflict of interest if it is satisfied that such conflict will not affect competition in the bid process or the diligent and faithful performance of the procurement contract, or operation of the framework agreement, as the case may be, and is otherwise not prejudicial to the interests of the procuring entity and the Government.

(5) Any decision of the procuring entity to exclude a bidder from the bid process or suspend the performance of the procurement contract or the operation of the framework agreement, as the case may be, under this section and the reasons therefor shall be included in the record of the bid process and promptly communicated to the bidder concerned.

Acceptance of the successful bid and award of the contract

54. (1) The procuring entity shall accept the successful bid unless:

- (a) The bidder presenting the successful bid is disqualified in accordance with 41; or
- (b) the procurement is cancelled in accordance with sub-section (1) of section 50; or
- (c) the bid found successful at the end of evaluation is rejected as abnormally low under section 51; or
- (d) the bidder presenting the successful bid is excluded from the bid process on the grounds specified in section 52 or section 53.

(2) The procuring entity shall promptly notify each bidder that presented a bid of its decision to accept the successful bid. The notice shall contain, at a minimum, the following information:

- (a) The name and address of the bidder presenting the successful bid;
- (b) the contract price or, where the successful bid was ascertained on the basis of price and other criteria, the contract price and a summary of other characteristics and relative advantages of the successful bid; and
- (c) the duration of the standstill period as set out in the bidding documents, which shall:
 - (i) at least be 15 days;
 - (ii) conform with the requirements, if any, of the Procurement Rules; and
 - (iii) specify that the successful bidder shall, for and in respect of the standstill period, have no claim for compensation in the event the bid process, the procurement contract or the framework agreement, as the case may be, is modified, suspended or terminated in any review

or appeal proceedings under this Act. The standstill period shall run from the date of dispatch of the notice under this sub-section to all bidders that presented submissions.

(3) Sub-section (2) of this section shall not apply to awards of procurement contracts:

- (a) Under a framework agreement procedure without second-stage competition;
- (b) where the contract price is less than one crore rupees or such higher amount as may be prescribed; or
- (c) where the procuring entity determines that urgent public interest considerations require the procurement to proceed without a standstill period. The decision of the procuring entity that such urgent considerations exist and the reasons for the decision shall be included in the record of the bid process.

(4) Except as otherwise provided in this Act or unless the Authority, the Tribunal or any court orders otherwise, the procuring entity shall enter into a procurement contract or framework agreement, as the case may be, with the successful bidder within ten days after the expiry of the standstill period, or where there is none, within fifteen days after the successful submission was ascertained.

(5) Unless a written procurement contract and/or approval by another authority is/are required, a procurement contract in accordance with the terms and conditions of the successful bid enters into force when the notice of acceptance is dispatched to the bidder concerned, provided that the notice is dispatched while the bid is still in effect.

(6) Where the bidding documents require the bidder whose bid has been accepted to sign a written procurement contract conforming to the terms and conditions of the accepted bid:

- (a) The procuring entity and the bidder concerned shall sign the procurement contract within a reasonable period of time after the notice of acceptance is dispatched to the bidder concerned;
- (b) unless the bidding documents stipulate that the procurement contract is subject to approval by another authority, the procurement contract enters into force when the contract is signed by the bidder concerned and by the procuring entity. Between the time when the notice of acceptance is dispatched to the bidder concerned and the entry into force of the procurement contract, neither the procuring entity nor that bidder shall take any action that interferes with the entry into force of the procurement contract or with its performance.

(7) Where the bidding documents stipulate that the procurement contract is subject to approval by another authority, the procurement contract shall not enter into force before the approval is given. The bidding documents shall specify the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval. A failure to obtain the approval within the time specified in the bidding documents shall not extend the period of effectiveness of bids specified in the bidding documents or the period of effectiveness of the bid security required under section 48, unless extended under the provisions of this Act.

(8) If the bidder whose bid has been accepted 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 either cancel the procurement, or may decide to select the next successful bidder from among those remaining in effect, in accordance with the criteria and procedures set out in this Act and in the bidding documents. In the latter case, the provisions of this section shall apply *mutatis mutandis* to such bid.

(9) Notices under this section are dispatched when they are promptly and properly addressed or otherwise directed and transmitted to the bidder, or conveyed to an

appropriate authority for transmission to the bidder, by any reliable means specified in accordance with section 39.

(10) Upon signing of the procurement contract and, if required, the provision by the bidder of a security for the performance of the contract, notice of the procurement contract shall be given promptly to other bidders, specifying the name and address of the bidder that has entered into the contract and the contract price.

(11) Where a procuring entity communicates its notice of acceptance of the bid under sub-section (2) of this section after a period of 120 days from the bid date, or signs the procurement contract after the period specified in sub-section (4) of this section, as the case may be, the bid price of the selected bidder shall be deemed to have increased by half a per cent for delay of every one month after the aforesaid period has expired and in the event the bid price is expressed in any form other than rupees, it shall be increased in a manner that is equivalent to such half a per cent:

(12) Acceptance of the successful bid pursuant to sub-section (1) of this section shall be communicated to all the bidders within a reasonable time, but no later than 120 days from the bid date:

Provided, however, that for reasons to be recorded in writing and communicated to all the bidders before expiry of the said 120 days, the procuring entity may extend the aforesaid period by upto 60 days, and in the event the aforesaid acceptance of the successful bid is not communicated within such extended period, the bids received in response to the invitation to bid shall lapse, and may be re-submitted, with or without modifications, by the respective bidders only in response to a fresh invitation, if any.

Accessibility of information, invitations and awards

55. (1) The Procurement Rules, administrative rulings, orders, directives or instructions of general application, and all invitations to present submissions, including the amendments thereof, shall be systematically maintained by every procuring entity, and promptly made accessible to all persons interested in such documents, and shall also be accessible on a website.

(2) Upon the entry into force of the procurement contract or conclusion of a framework agreement, the procuring entity shall promptly publish on the relevant website, notice of the award of the procurement contract or the framework agreement, specifying the name(s) of the vendors to which the procurement contract or the framework agreement was awarded and, in the case of procurement contracts, the contract price. The procuring entity shall also publish on the relevant website, a cumulative notice of such awards from time to time but at least once a year.

(3) The Government may from time to time prescribe the classification and manner in which the information to be provided pursuant to sub-sections (1) and (2) of this section shall be displayed on the specified website(s) so that it is readily and conveniently accessible to all persons interested in such information.

(4) This section is not applicable to a procurement contract where the value of procurement is less than two lakh rupees.

Confidentiality

56. (1) In its communications with bidders or the public, the procuring entity shall not disclose any information if its non-disclosure is necessary for the protection of national security interests or if it is classified information or if its disclosure would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the bidders or would impede fair competition, unless disclosure of that information is ordered by the Authority, the Tribunal or any court, and in such case, subject to the conditions of such an order.

(2) Other than when providing or publishing information pursuant to sub-sections (2) and (10) of section 54 and sections 55, 57 and 91, the procuring entity shall treat applications to pre-qualify or for pre-selection and submissions in such a manner as to avoid the disclosure of their contents to competing bidders or to any other person not authorised to have access to this type of information.

(3) Any discussions, communications, negotiations and dialogue between the procuring entity and a bidder pursuant to sub-section (3) of section 97 and sections 98 to

100 shall be confidential. Unless required by law or ordered by the Authority, the Tribunal or any court or permitted in the bidding documents, no party to any discussions, communications, negotiations or dialogue shall disclose to any other person any technical, price or other information relating to these discussions, communications, negotiations or dialogue without the consent of the other party.

(4) Subject to the requirements in sub-section (1) of this section, in procurement involving classified information, the procuring entity may:

- (a) Impose on bidders requirements aimed at protecting classified information; and
- (b) demand that bidders ensure compliance with requirements aimed at protecting classified information by their subcontractors.

Documentary record of bid process

57. (1) The procuring entity shall maintain a record of the bid process that includes the following information:

- (a) A brief description of the subject matter of the procurement;
- (b) the names and addresses of bidders that presented applications to pre-qualify, proposals, quotations or bids, as the case may be, and the name(s) and address(es) of the bidder(s) with which the procurement contract or framework agreement is entered into and the contract price specified in the procurement contract;
- (c) a statement of the reasons and circumstances relied upon by the procuring entity for the decision as regards means of communication and any requirement of form;
- (d) in the bid process, in which the procuring entity, in accordance with section 40, limits participation of bidders, a statement of the reasons and

circumstances relied upon by the procuring entity for imposing the limitation;

- (e) if the procuring entity uses a method of procurement other than open competitive bidding, a statement of the reasons and circumstances relied upon by the procuring entity to justify the use of such other method;
- (f) in the case of procurement by means of an electronic reverse auction or involving an electronic reverse auction as a phase preceding the award of the procurement contract, a statement of the reasons and circumstances relied upon by the procuring entity for the use of the auction, and information about the date and time of the opening and closing of the auction;
- (g) in the case of a framework agreement procedure, a statement of the reasons and circumstances upon which it relied to justify the use of a framework agreement procedure and the type of framework agreement selected;
- (h) if the procurement is cancelled pursuant to sub-section (1) of section 50, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision to cancel the procurement;
- (i) if any socio-economic policies were considered in the bid process, details of such policies and the manner in which they were applied;
- (j) in the case of a review or appeal under this Act, a copy of the review petition and the appeal, as applicable, and of all decisions taken in the relevant review or appeal proceedings or both and the reasons therefor;
- (k) a summary of any requests for clarification of the pre-qualification or pre-selection documents, if any, or the bidding documents, the responses thereto, as well as a summary of any modification of those documents;

- (l) information relative to the qualifications, or lack thereof, of bidders that presented applications to pre-qualify, or for pre-selection, if any, or submissions;
- (m) if a bid is rejected pursuant to section 51, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision;
- (n) if a bidder is excluded from the bid process pursuant to section 52, a statement to that effect and the reasons and circumstances relied upon by the procuring entity for its decision;
- (o) if the bid process resulted in the award of a procurement contract in accordance with sub-section (8) of section 54, a statement to that effect and of the reasons therefor;
- (p) the contract price and other principal terms and conditions of the procurement contract; where a written procurement contract has been concluded, a copy thereof. In the case of a framework agreement procedure, in addition a summary of the principal terms and conditions of the framework agreement or copy of any written framework agreement concluded;
- (q) for each submission, the price and a summary of the other principal terms and conditions;
- (r) a summary of the evaluation of bids, including the application of any preference pursuant to clause (b) of sub-section (3) of section 43, and the reasons and circumstances on which the procuring entity relied to justify any rejection of bids presented during the auction;
- (s) where exemptions from disclosure of information were invoked under sub-section (8) of section 6, sub-section (11) of section 24, sub-section (1) of

section 56 or sub-section (12) of section 130, the reasons and circumstances relied upon in invoking them;

- (t) a copy of the notice of the decision to accept the successful bid in accordance with sub-section (2) of section 54;
- (u) if no standstill period was applied under sub-section (2) of section 54, a statement of the reasons and circumstances relied upon by the procuring entity in deciding not to apply a standstill period;
- (v) in procurement involving classified information, any requirements imposed on bidders for the protection of classified information pursuant to sub-section (4) of section 56; and
- (w) other information required to be included in the record in accordance with the provisions of this Act or the Procurement Rules.

(2) Subject to the provisions of sub-section (3) of this section, the record referred to in sub-section (1) of this section shall, on request, be made available to any person after the successful bid has been accepted or the procurement has been cancelled. Disclosure of the record may be ordered at an earlier stage only by the Authority, the Tribunal or any court.

(3) Except when ordered to do so by the Authority, the Tribunal or any court, and subject to the conditions of such an order, the procuring entity shall not disclose information from the record of the bid process if doing so would impair the protection of national security interests, cause disclosure of classified information, impede law enforcement, prejudice the legitimate commercial interests of the bidders, impede fair competition or contravene any law.

(4) The procurement entity shall record, file and preserve all documents relating to the bid process according to this Act, the Procurement Rules or the provisions of any law for the time being in force.

Registration of qualified bidders

58. (1) A procuring entity may invite offers from prospective vendors for their registration as qualified bidders for participation in the bid process of a particular procurement or class of procurement during the validity of such qualification:

Provided that the Government may prescribe the procedure, conditions and manner of registration of qualified bidders, which may include a common registration of qualified bidders for any class of procurement to be undertaken by the specified procuring entities.

(2) The qualification requirements under this section may, as far as practicable, be specified in accordance with the provisions of section 41 and the process of qualification may, as far as practicable, conform with the provisions of section 41.

(3) Where the pre-qualification is for supply of goods, the qualification requirements may include testing or other quality assurance demonstration that must be completed prior to or as a part of the process of pre-qualification.

(4) Before requiring any testing or demonstration in pursuance of sub-section (3) of this section, the procuring entity shall –

- (a) prepare a written justification stating the necessity for establishing the testing and demonstration requirement for a product and state why such requirement must be demonstrated before pre-qualification;
- (b) specify in writing and make available to a potential bidder upon request, all requirements which a prospective bidder, or its product, must satisfy in order to be qualified, such requirements to be limited to those least restrictive to meet the objectives of the qualification requirement;

- (c) ensure that a potential bidder is provided, upon request, a prompt opportunity to demonstrate at its own expense, its ability to meet the standards specified for qualification using qualified personnel and facilities of the specified agency or other methods approved by the procuring entity including use of approved testing and evaluation services of agencies acceptable to the procuring entity; and
- (d) ensure that a potential bidder seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(5) A potential bidder for supply of goods may not be denied the opportunity to submit and have considered its bid solely because the potential bidder has not been identified and registered as meeting a qualification requirement under this section, if the potential bidder can demonstrate to the satisfaction of the procuring entity that the potential bidder or its product meets the standards established for qualification or can meet such standards before the date specified for award of the contract.

(6) The head of an agency need not delay a proposed procurement in order to comply with subsections (3) and (4) of this section or in order to provide a potential bidder with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(7) If the number of pre-qualified bidders available to compete actively for an anticipated future requirement is fewer than three actual manufacturers or the products of three actual manufacturers respectively, the head of the procuring entity shall publish notice at least once a year in one prominent newspaper and one industry specific newspaper or periodical soliciting additional sources or products to seek qualification.

(8) Within five years after the establishment of a pre-qualification requirement, the need for such requirement shall be examined and the standards of such requirement revalidated in accordance with the requirements of this section.

(9) Except in an emergency as determined by the head of the procuring entity, whenever the head determines not to enforce a qualification requirement for any procurement, the procuring entity may not thereafter enforce that qualification requirement unless the procuring entity complies with the requirements of subsections (3) and (4) of this section.

(10) Upon pre-qualification under this section, the qualified persons shall not be required to meet the qualification requirements for any particular procurement which requires similar qualification, and shall accordingly be eligible for participation in the bid process for such procurement during the validity of their pre-qualification.

Certain conditions relating to consultancy services

59. (1) All procurement contracts in respect of intellectual, advisory or consultancy services shall be deemed to include the following conditions requiring every vendor of services to:

- (a) adhere to and conform with the standards of performance and ethics required of it in accordance with the rules, regulations and guidelines of the relevant professional body or institution of which it is a member or associate;
- (b) render advice which in its judgement is professional, truthful and in the best interests of the procuring entity;
- (c) undertake due diligence and make all reasonable efforts to provide sound professional advice;
- (d) engage persons with sufficient qualifications, experience and professional competence relevant and necessary for the services to be provided;

- (e) disclose any conflict of interest that it has or is likely to have, including any conflict of interest specified in section 53;
- (f) be responsible for any damage or loss caused to the procuring entity as a consequence of the negligence or lack of due diligence on the part of the vendor and pay compensation which may extend to three times the contract value.

(2) A vendor who is in breach or default of the conditions specified in sub-section (1) of this section shall be deemed to be in breach of its procurement contract and shall, in addition to any penalty, damages or claims under this Act or the procurement contract, be liable to debarment under section 154.

(3) No person who is not a public servant may ordinarily be engaged by a procuring entity for services to conduct evaluations or analyses of any aspect of a proposal or bid submitted for a procurement unless public servants with adequate capabilities to perform such evaluations and analyses are not readily available within the procuring entity, as determined by the head of the procuring entity.

(4) The procuring entity shall evaluate and consider the advice of the vendor referred to in sub-section (1) of this section and shall act in its best judgement and on its own authority in all matters associated with the relevant procurement. The advice or opinion of the vendor shall not be a valid defence for the procuring entity and its officers, employees or agents, as the case may be, in matters relating to the rights and claims of third parties.

Restrictions on cost-plus procurement

60. (1) No procuring entity shall procure the subject matter of the procurement through the cost-plus-a-percentage-of-cost system.

(2) Where an entity is engaged for implementation of a procurement contract for and on behalf of a procuring entity, its services may be retained on the basis of a cost-plus-a-fixed-fee contract where the fee shall not exceed six per cent of the estimated cost of the procurement contract, exclusive of the fee, as determined by the head of the

procuring entity at the time of entering into the contract for procurement of such services. In the case of architectural and engineering services, the fixed fee shall not exceed five per cent of the estimated cost of the relevant project, exclusive of fees, as determined by the head of the procuring entity at the time of entering into the contract for such the architectural and engineering services. Provided, however, that the fixed fee in case of contracts for experimental, developmental or research work may be increased as necessary, but in no case exceeding twice the amount specified above.

(3) The provisions of sub-sections (1) and (2) of this section shall not apply to research and development contracts with universities, educational or research institutions for payment of reimbursable costs on the basis of pre-determined norms, principles or criteria.

(4) An authorised representative of the head of the procuring entity may inspect the plant or offices and audit the records of, or seek further data or information from, a vendor performing any cost-reimbursement, incentive-based, time-and-materials, labour-hour, or any combination of such or similar procurement contracts, and the vendor shall assist, facilitate and cooperate with the procuring entity in discharge of its functions under this sub-section as if it is complying with a direction of the Authority under this Act and performing an obligation under the procurement contract.

Composition, packaging and sub-division of contracts

61. (1) No procurement contract for works or goods, or any payments thereunder, shall be split, divided or sub-divided with reference to any components, items or units and shall only be procured as a composite whole:

Provided that the procuring entity may, for reasons to be recorded in writing, dispense with the restriction contained in this sub-section for any procurement carried out in accordance with the provisions of sections 94, 100 or 101, as the case may be.

Provided further that a procurement contract may provide for payment to be made to a vendor on completion of specified stages of performance of that procurement contract.

Explanation: A procurement contract for any plant or equipment shall not be split into or paid for with reference to any component or part thereof and any contract for works shall not be split into or paid for with reference to any units or items thereof, except when such units or items have been added in the procurement contract by means of a change in scope thereof.

(2) A procurement contract for plant, equipment or works shall, as far as may be, provide for turn-key procurement for a lump sum price which may only be varied on account of inflation, change in scope, delay caused by reasons beyond the control of the vendor, and such other elements or circumstances as may be prescribed.

(3) No procurement for any subject matter of the procurement shall ordinarily be sub-divided into two or more contracts or packages unless the procuring entity, for reasons to be recorded in writing, determines that a single contract is likely to result in less efficiency and economy or in a significantly longer period of completion or supply, as the case may be.

Provided that such division into separate contracts or packages shall be in no greater number than may be necessary for fulfilling the objectives of that procurement.

Illustration: Construction of a particular road or purchase of 10,000 meters of sewer pipes shall not be divided into two or more contracts unless the procuring entity determines otherwise in accordance with the provisions of this section.

Standard terms of procurement

62. (1) No procurement contract for a sum exceeding ten crore rupees shall be signed after expiry of a period of one year from the commencement of this Act unless the standard terms applicable to such procurement contract have either been approved by the Department prior to invitation of bids or the same are in conformity with any general or special terms of contract that have been prescribed by the Government.

(2) The Government may prescribe the standard terms that shall be included in a procurement contract or a class of procurement contracts and every procuring entity shall include such standard terms in its procurement contracts.

(3) The Government may prescribe the form of a procurement contract or of any other bidding document that would apply to a specified procurement or class of procurements and every procuring entity shall adopt such form of contract or other bidding document to the extent prescribed.

Procurement contracts to provide for timely payments

63. (1) As a standard condition, every procurement contract shall be deemed to specify that:

- (a) all sums due and payable for and in respect of any procurement shall be paid within 30 days of the date on which the invoice for payment, accompanied by necessary particulars, is submitted to the procuring entity, and for any period of delay, the procuring entity shall pay to the vendor interest calculated at the rate of one per cent per month or part thereof on the amount remaining unpaid after such 30 days and until the payment is made; provided that the vendor shall not be liable for delay in submission of any particulars if such particulars are in the possession of, or under the control of the procuring entity or its agent.
- (b) If any invoice submitted by a vendor under sub-section (1) of this section is incomplete or not accompanied by necessary particulars, the procuring entity shall issue a notice, in reasonable detail, to the vendor within 15 days of receiving such invoice and upon receipt of a complete invoice with necessary particulars, pay the sum due within 15 days of receiving such complete invoice.
- (c) Where the procuring entity has determined that the invoice submitted by the vendor is not complete, it shall in good faith, determine the amount which may be withheld as a likely deduction, security or penalty, and pay the balance due within the specified period of 30 days and in such an event, the liability of the procuring entity to pay the interest specified in sub-section (1) of this section shall be restricted to the unpaid amount.

Procurement under multi-year contracts

64. (1) Subject to the provisions of this section, the procuring entity may enter into a procurement contract for works, goods or services to be procured beyond the year for which budgetary appropriation has been made. In determining the period of a procurement contract, the procuring entity shall have due regard for efficiency and economy in that procurement.

(2) The payment obligations under a procurement contract referred to in subsection (1) of this section shall constitute a committed liability for the allocation of funds in subsequent years and shall have priority in expenditure out of the budgetary appropriation of the procuring entity for such years.

(3) If the budgetary appropriation of a procuring entity is not sufficient for making the payments due in respect of any procurement, the procuring entity shall, as soon as practicable, notify the vendor and restrict the procurement to the funds available with the procuring entity. Provided, however, that the vendor shall be at liberty to seek such compensation as may be due to it for modification or termination of the procurement contract, and payment of such compensation shall constitute the first charge on the budgetary appropriation of the procuring entity.

(4) No procuring entity shall ordinarily enter into a multi-year contract for procurement of goods that are sold in the open market and are normally produced by more than one manufacturer.

Provided that the procuring entity may extend a one-year contract by another year if it determines that such extension is necessary to ensure continuity of supplies and the contract value to be paid during such extension is not prejudicial to the interests of the procuring entity.

Inspection of works, goods and services

65. (1) All works, goods and services shall be inspected by the procuring entity for assurance of quality and quantity.

(2) The procuring entity may either undertake such inspection itself or rely on manufacturers' warranties or inspection by or through an independent person or agency duly qualified and authorised to undertake such inspection.

Sale, lease or licence by a public entity

66. Except as otherwise provided in any other law for the time being in force, the principles and procedures of procurement specified in this Act shall apply *mutatis mutandis* to any sale, lease or licence to be made by a public entity in favour of any private entity for and in respect of any goods, works, assets or land.

Code of conduct

67. The Government shall prescribe a code of conduct for officers or employees of procuring entities. It shall address, inter alia, the prevention of conflicts of interest in procurement and, where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declarations of interest in particular procurements, screening procedures and training requirements.

CHAPTER V

METHODS OF PROCUREMENT AND INVITATION TO BID

SECTION I. METHODS OF PROCUREMENT AND THEIR CONDITIONS FOR USE

Methods of procurement

68. (1) The procuring entity may conduct procurement by means of:

- (a) Open competitive bidding;
- (b) restricted bidding;
- (c) request for quotations;
- (d) request for proposals without negotiation;
- (e) two-stage bidding;
- (f) request for proposals with dialogue;
- (g) request for proposals with consecutive negotiations;
- (h) competitive negotiations;
- (i) electronic reverse auction;
- (j) single-source procurement; and
- (k) direct purchase from retail network.

(2) The procuring entity may engage in a framework agreement procedure in accordance with the provisions of chapter X.

General rules for the selection of a procurement method

69. (1) Except as otherwise provided for in sections 70 to 79, a procuring entity shall conduct procurement by means of open competitive bidding.

(2) A procuring entity may use a method of procurement other than open competitive bidding only in accordance with sections 70 to 79, shall select the other method of procurement to accommodate the circumstances of the procurement concerned, and shall seek to maximise competition to the extent practicable.

(3) If the procuring entity uses a method of procurement other than open competitive bidding, it shall include in the record required under section 57 a statement of the reasons and circumstances upon which it relied to justify the use of that method.

Conditions for use of restricted bidding

70. The procuring entity may engage in procurement by means of restricted bidding in accordance with section 94 when:

- (a) The subject matter of the procurement, by reason of its highly complex or specialised nature, is available only from a limited number of potential vendors;
- (b) the time and cost required to examine and evaluate a large number of bids would be disproportionate to the value of the subject matter of the procurement; or
- (c) such conditions as may be prescribed are satisfied.

Conditions for use of request for quotations

71. A procuring entity may engage in procurement by means of a request for quotations in accordance with section 95 for the procurement of readily available goods or services that are not specially produced or provided to the particular description of the procuring entity and for which there is an established market, so long as the estimated value of the procurement contract is less than ten lakh rupees or such higher amount as may be prescribed in the Procurement Rules.

Conditions for use of request for proposals

72. The procuring entity may engage in procurement by means of request for proposals without negotiation in accordance with section 96 where the procuring entity

needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of quality and technical aspects of the proposals or after evaluation of the qualifications and experience of the bidders, as the case may be.

Conditions for use of two-stage bidding

73. (1) A procuring entity may engage in procurement by means of two-stage bidding in accordance with section 97 where:

- (a) The procuring entity assesses that discussions with bidders are needed to refine aspects of the description of the subject matter of the procurement and to formulate them with the precision required under section 42 and in order to allow the procuring entity to obtain the most satisfactory solution to its procurement needs; or
- (b) open competitive bidding was engaged in but no bids were presented or the procurement was cancelled by the procuring entity pursuant to sub-section (1) of section 50 and where, in the judgement of the procuring entity, engaging again in open competitive bidding or a procurement method under chapter VII would be unlikely to result in a procurement contract.

(2) The procuring entity may also engage in procurement by means of two-stage bidding in accordance with section 97 where:

- (a) the procurement includes the provision of the subject matter of the procurement for a period exceeding five years;
- (b) the likely contract value of the procurement exceeds fifty crore rupees; or
- (c) the vendor is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement;

Conditions for use of request for proposals with dialogue

74. Subject to prior approval of the Department of Procurement Policy, a procuring entity may engage in procurement by means of request for proposals with dialogue in accordance with section 98 where:

- (a) It is not feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement in accordance with section 42, and the procuring entity assesses that dialogue with bidders is needed to obtain the most satisfactory solution to its procurement needs;
- (b) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs;
- (c) the procuring entity determines that the selected method is the most appropriate method of procurement for the protection of national security interests;
- (d) open competitive bidding was engaged in but no bids were presented or the procurement was cancelled by the procuring entity pursuant to section 50 (1) and where, in the judgement of the procuring entity, engaging again in open competitive bidding or a procurement method under chapter VII would be unlikely to result in a procurement contract.

Conditions for use of request for proposals with consecutive negotiations

75. A procuring entity may, subject to such procedure, conditions and manner as may be prescribed, engage in procurement by means of request for proposals with consecutive negotiations in accordance with section 99 where the procuring entity needs to consider the financial aspects of proposals separately and only after completion of examination and evaluation of quality and technical aspects of the proposals, and it assesses that consecutive negotiations with bidders are needed in order to ensure that the financial terms and conditions of the procurement contract are acceptable to the procuring entity.

Conditions for use of competitive negotiations

76. A procuring entity may engage in competitive negotiations, in accordance with the provisions of section 100, in the following circumstances:

- (a) There is an urgent need for the subject matter of the procurement, and engaging in open competitive bidding or any other competitive method of procurement because of the time involved in using those methods would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;
- (b) owing to a catastrophic event, natural disaster or epidemic, there is an urgent need for the subject matter of the procurement, making it impractical to use open competitive bidding or any other competitive method of procurement because of the time involved in using those methods; or
- (c) where the procuring entity determines that the use of any other competitive method of procurement is not appropriate for the protection of national security interests.

Conditions for use of single-source procurement

77. (1) A procuring entity may engage in single-source procurement in accordance with the provisions of section 101 in the following exceptional circumstances:

- (a) The subject matter of the procurement is available only from a particular vendor, or a particular vendor has exclusive rights in respect of the subject matter of the procurement, such that no reasonable alternative or substitute exists, and the use of any other procurement method would therefore not be possible;
- (b) owing to a catastrophic event, natural disaster or epidemic, there is an extremely urgent need for the subject matter of the procurement, and engaging in any other method of procurement would be impractical because of the time involved in using those methods;

- (c) the procuring entity, having procured goods, equipment, technology or services from a vendor, determines that additional supplies must be procured from that vendor for reasons of standardisation or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question;
 - (d) where the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of national security interests; or
 - (e) subject to approval by the Department of Procurement Policy, and following public notice and adequate opportunity to comment, where procurement from a particular vendor is necessary in order to implement a socio-economic policy of the Government, provided that procurement from no other vendor is capable of promoting that policy.
- (2) A procuring entity may, without inviting bids, engage in single source procurement of the following services through nomination and negotiations:
- (a) Services of an expert for use in any litigation or dispute, including any reasonably foreseeable litigation or dispute, involving the procuring entity in any trial, hearing, or proceedings before any court, administrative tribunal, or agency, or in any alternative dispute resolution process;
 - (b) services of a law firm, consulting firm or expert for any consultancy or advisory assignment, subject to a maximum fee of twenty five lakh rupees or such higher ceiling as may be prescribed; and
 - (c) such other services as may be exempted by the Department from time to time, subject to such conditions as may be specified.

(3) No firm or expert shall be engaged under the provisions of sub-section (2) of this section without the approval of the head of the procuring entity or such other entity or officer as may be prescribed. Provided that the head of the procuring entity may delegate his powers to any officer subordinate to him for procurement of services with a contract value not exceeding ten lakh rupees.

(4) In approving the procurement of any services under this section, the head of the procuring entity shall have due regard for such guidelines as may be issued by the Department from time to time.

Conditions for direct purchase from retail network

78. Subject to such conditions as may be prescribed in the Procurement Rules, a procuring entity may procure any goods or services by means of direct purchase in accordance with section 102, when:

- (a) such goods or services are also sold to the general public through a retail network;
- (b) such goods or services are freely sold in the open market for uses not restricted to the procuring entities; and
- (c) the estimated contract value of such procurement is less than two lakh rupees or such higher amount as set forth in the Procurement Rules.

Conditions for use of an electronic reverse auction

79. (1) A procuring entity may engage in procurement by means of an electronic reverse auction in accordance with the provisions of chapter IX, under the following conditions:

- (a) Where it is feasible for the procuring entity to formulate a detailed and precise description of the subject matter of the procurement;
- (b) where there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, such that effective competition is ensured; and

- (c) where the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms.

(2) A procuring entity may use an electronic reverse auction as a phase preceding the award of the procurement contract in a procurement method as appropriate under the provisions of this Act. It may also use an electronic reverse auction for award of a procurement contract in a framework agreement procedure with second-stage competition in accordance with the provisions of this Act. An electronic reverse auction under this sub-section may be used only where the conditions specified in sub-section (1) (c) of this section are satisfied.

Conditions for use of a framework agreement procedure

80. (1) A procuring entity may engage in a framework agreement procedure in accordance with chapter X where it determines that:

- (a) The need for the subject matter of the procurement is expected to arise on an indefinite or repeated basis during a given period of time; or
- (b) by virtue of the nature of the subject matter of the procurement, the need for it may arise on an urgent basis during a given period of time.

2) The procuring entity shall include in the record required under section 57 a statement of the reasons and circumstances upon which it relied to justify the use of a framework agreement procedure and the type of framework agreement selected.

SECTION II. INVITATION TO BID

Invitation in open competitive bidding, two-stage bidding etc.

81. (1) An invitation to bid in open competitive bidding or two-stage bidding and an invitation to an electronic reverse auction under section 103 shall be published in at least one prominent newspaper and on the relevant website of the Government or in such manner as may be prescribed.

(2) The provisions of this section shall not apply where the procuring entity engages in a pre-qualification process in accordance with section 49.

Invitation in restricted bidding, quotations etc.

82. (1) (a) When the procuring entity engages in procurement by means of restricted bidding on the grounds specified in clause (a) of section 70, it shall invite bids from all potential bidders from which the subject matter of the procurement is available;

(b) When the procuring entity engages in procurement by means of restricted bidding on the grounds specified in clause (b) of section 70, it shall select potential bidders from which to invite bids in a non-discriminatory manner, and it shall select a sufficient number of bidders to ensure effective competition.

(2) Where the procuring entity engages in procurement by means of request for quotations in accordance with section 71, it shall request quotations from as many bidders as practicable, but from at least three.

(3) Where the procuring entity engages in procurement by means of competitive negotiations in accordance with section 76, it shall engage in negotiations with a sufficient number of bidders to ensure effective competition.

(4) Where the procuring entity engages in single-source procurement in accordance with section 77, it shall invite a proposal or price quotation from a single vendor.

(5) Prior to direct invitation in accordance with the provisions of sub-sections (1), (3) and (4) of this section, the procuring entity shall cause a notice of the procurement to be published in the relevant website of the Government or in such manner as may be prescribed. The notice shall contain at a minimum the following information:

(a) The name and address of the procuring entity;

(b) a summary of the principal required terms and conditions of the procurement contract or the framework agreement to be entered into in the bid process, including the nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the construction to be

effected, or the nature of the services and the location where they are to be provided, as well as the desired or required time for the supply of the goods, for the completion of the construction, or for the provision of the services;

- (c) a declaration pursuant to section 40; and
- (d) the method of procurement to be used.

(6) The requirements of sub-section (5) shall not apply in the case of urgency as referred to in clause (b) of section 76 and clause (b) of sub-section (1) of section 77.

Invitation in request for proposals process

83. (1) An invitation to participate in the request for proposals process shall be published in accordance with sub-section (1) of section 81, except where:

- (a) The procuring entity engages in a pre-qualification process in accordance with section 49 or in a pre-selection process in accordance with sub-section (3) of section 98; or
- (b) the procuring entity engages in direct invitation under the conditions set out in sub-section (2) of this section.

(2) The procuring entity may engage in direct invitation in a request for proposals process if:

- (a) The subject matter to be procured is available only from a limited number of potential bidders, provided that the procuring entity invites proposals from all those bidders; or
- (b) the time and cost required to examine and evaluate a large number of proposals would be disproportionate to the value of the subject matter to be procured, provided that the procuring entity invites proposals from a sufficient number of bidders to ensure effective competition; or

(c) the procurement involves classified information, provided that the procuring entity invites proposals from a sufficient number of bidders to ensure effective competition.

(3) The procuring entity shall include in the record required under section 57 a statement of the reasons and circumstances upon which it relied to justify the use of direct invitation in the request for proposals process.

(4) The procuring entity shall cause a notice of the procurement to be published in accordance with the requirements set out in sub-section (5) of section 82 where it engages in direct invitation in the request for proposals process.

CHAPTER VI

OPEN COMPETITIVE BIDDING

SECTION I. INVITATION TO BID

Procedures for inviting bids

84. The procuring entity shall invite bids by causing an invitation to bid to be published in accordance with the provisions of section 81.

Contents of invitation to bid

85. The invitation to bid shall include the following information:

- (a) The name and address of the procuring entity;
- (b) a summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the bid process, including the nature and quantity, and place of delivery of the goods to be supplied, the nature and location of the construction to be effected, or the nature of the services and the location where they are to be provided, as well as the desired or required time for the supply of the goods, for the completion of the construction, or for the provision of the services;
- (c) a summary of the criteria and procedures to be used for ascertaining the qualifications of bidders, and of any documentary evidence or other information that must be provided by bidders to demonstrate their qualifications, in conformity with section 41;
- (d) a declaration pursuant to section 40;
- (e) the means of obtaining the bidding documents and the place where they may be obtained;
- (f) the price, if any, charged by the procuring entity for the bidding documents;
- (g) if a price is charged for the bidding documents, the means of payment; and

- (h) the manner, place and deadline for presenting bids.

Provision of bidding documents

86. The procuring entity shall provide the bidding documents to each bidder that responds to the invitation to bid in accordance with the procedures and requirements specified therein. If the pre-qualification process has been engaged in, the procuring entity shall provide a set of bidding documents to each bidder that has been pre-qualified and that pays the price, if any, charged for those documents. The price that the procuring entity may charge for the bidding documents shall ordinarily reflect the cost of providing them to the bidders.

Contents of bidding documents

87. The bidding documents shall include the following information:

- (a) Instructions for preparing bids;
- (b) the criteria and procedures, in conformity with the provisions of section 41, that will be applied in the ascertainment of the qualifications of bidders and in any further demonstration of qualifications pursuant to sub-section (5) of section 92;
- (c) the requirements as to documentary evidence or other information that must be presented by the bidders to demonstrate their qualifications;
- (d) a detailed description of the subject matter of the procurement, in conformity with section 42; the quantity of the goods; services to be performed; the location where the goods are to be delivered, construction is to be effected or services are to be provided; and the desired or required time, if any, when goods are to be delivered, construction is to be effected or services are to be provided;
- e) the terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;

- (f) if alternatives to the characteristics of the subject matter of the procurement, contractual terms and conditions or other requirements set out in the bidding documents are permitted, a statement to that effect, and a description of the manner in which alternative bids are to be evaluated;
- (g) if bidders are permitted to present bids for only a portion of the subject matter of the procurement, a description of the portion or portions for which bids may be presented;
- (h) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, duties and taxes;
- (i) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any bid security to be provided by bidders presenting bids in accordance with section 48, and any such requirements for any security for the performance of the procurement contract to be provided by the bidder that enters into the procurement contract;
- (j) if a bidder may not modify or withdraw its bid prior to the deadline for presenting bids without forfeiting its bid security, a statement to that effect;
- (k) the manner, place and deadline for presenting bids, in conformity with section 45;
- (l) the means by which, pursuant to section 46, bidders may seek clarifications of the bidding documents, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of bidders;
- (m) the period of time during which bids shall be in effect, in conformity with section 90;
- (n) the manner, place, date and time for the opening of bids, in conformity with section 91;

- (o) the criteria and procedure for examining bids against the description of the subject matter of the procurement;
- (p) the criteria and procedure for evaluating bids in accordance with section 43;
- (q) the currency that will be used for the purpose of evaluating bids pursuant to sub-section (4) of section 92, and either the exchange rate that will be used for the conversion of bids into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (r) references to this Act, the Procurement Rules and other laws directly pertinent to the bid process;
- (s) the name, functional title and address of one or more officers of the procuring entity who are authorised to communicate directly with and to receive communications directly from bidders in connection with the bid process, without the intervention of an intermediary;
- (t) notice of the right provided under this Act to file a review or appeal against decisions or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Act together with information about the duration of the applicable standstill period, if any;
- (u) any formalities that will be required once a successful bid has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract and approval by another authority, pursuant to section 54, and the estimated period of time following the dispatch of the notice of acceptance that will be required to obtain the approval; and
- (v) any other requirements established by the procuring entity in conformity with this Act and the Procurement Rules relating to the preparation and presentation of bids and to other aspects of the bid process.

Procurement contract to be provided to bidders

88. (1) Subject to the provisions of sub-section (3) of this section, the bidding documents to be provided to each bidder shall include the form of the procurement contract that the selected bidder shall execute with the procuring entity. Such procurement contract shall include all the terms and conditions of procurement which may be amended prior to the bid date and communicated to all the bidders in accordance with the provisions of section 46.

(2) The procuring entity may, instead of providing a form of the procurement contract, refer to a standard contract that would apply to a particular procurement.

(3) The procuring entity may dispense with the requirement of a procurement contract where the value of the procurement is less than ten lakh rupees or such higher amount as may be prescribed, and in such an event, the quotation offered by the successful bidder in response to an invitation to bid and the acceptance thereof by the procuring entity shall, in the absence of a formal contract, be deemed to be the procurement contract.

SECTION II. PRESENTATION OF BIDS

Presentation of bids

89. (1) Bids shall be presented in the manner, at the place and by the deadline specified in the bidding documents.

(2) (a) A bid shall be presented in writing, and signed, and:

(i) if in paper form, in a sealed envelope; or

(ii) if in any other form, according to requirements specified by the procuring entity in the bidding documents, which ensure at least a similar degree of authenticity, security, integrity and confidentiality;

(b) the procuring entity shall provide to the bidder a receipt showing the date and time when its bid was received;

- (c) the procuring entity shall preserve the security, integrity and confidentiality of a bid, and shall ensure that the content of the bid is examined only after its opening in accordance with this Act.

3) A bid received by the procuring entity after the deadline for presenting bids shall not be opened and shall be returned unopened to the bidder that presented it.

Period of effectiveness, modification and withdrawal of bids

90. (1) Bids shall be in effect during the period of time specified in the bidding documents:

Provided that such period of time shall not ordinarily extend beyond 120 days from the bid date, and in no case beyond 240 days from the bid date.

- (2) (a) Prior to the expiry of the period of effectiveness of bids, the procuring entity may request bidders to extend the period for an additional period of time not exceeding the period specified in sub-section (1) of this section. A bidder may refuse the request without forfeiting its bid security.

- (b) Bidders that agree to an extension of the period of effectiveness of their bids shall extend or procure an extension of the period of effectiveness of bid securities provided by them or provide new bid securities to cover the extended period of effectiveness of their bids. A bidder whose bid security is not extended, or that has not provided a new bid security, is considered to have refused the request to extend the period of effectiveness of its bid.

(3) Unless otherwise stipulated in the bidding documents, a bidder may modify or withdraw its bid prior to the deadline for presenting bids without forfeiting its bid security. The modification or notice of withdrawal is effective if it is received by the procuring entity prior to the deadline for presenting bids.

SECTION III. EVALUATION OF BIDS

Opening of bids

91. (1) Bids shall be opened at the time specified in the bidding documents as the deadline for presenting bids. They shall be opened at the place and in accordance with the manner and procedures specified in the bidding documents.

(2) All bidders that have presented bids, or their representatives, shall be permitted by the procuring entity to participate in the opening of the bids.

(3) The name and address of each bidder whose bid is opened and the bid price shall be announced to those persons present at the opening of bids, communicated on request to bidders that have presented bids but that are not present or represented at the opening of bids, and included immediately in the record of the bid process required by section 57.

Examination and evaluation of bids

92. (1) (a) Subject to clause (b) of this sub-section, the procuring entity shall regard a bid as responsive if it conforms to all requirements set out in the bidding documents in accordance with section 42.

(b) The procuring entity may regard a bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the bidding documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the bid. Any such deviations, if found acceptable, shall be quantified, to the extent possible, and appropriately taken account of in the evaluation of the bid.

(2) The procuring entity shall reject a bid:

(a) If the bidder that presented the bid is not qualified;

(b) if the bidder that presented the bid does not accept a correction of an arithmetical error made pursuant to section 47;

- (c) if the bid is not responsive; or
 - (d) in the circumstances referred to in sections 51, 52 or 53.
- (3) (a) The procuring entity shall evaluate the bids that have not been rejected in order to ascertain the successful bid, as defined in clause (b) of this sub-section, in accordance with the criteria and procedures set out in the bidding documents. No criterion or procedure shall be used that has not been set out in the bidding documents;
- (b) the successful bid shall be:
- (i) where price is the only award criterion, the bid with the lowest bid price;
 - (ii) where there are price and other award criteria, the most advantageous bid ascertained on the basis of the criteria and procedures for evaluating bids as specified in the bidding documents in accordance with section 43; or
 - (iii) where the bids have been invited for a not-for-profit supply of the subject matter of the procurement or for supply from a not-for-profit entity, the most advantageous bid ascertained on the basis of selected non-financial criteria or other parameters for evaluating bids as specified in the bidding documents in accordance with sub-section (6) of section 43.
- (4) When bid prices or any other qualification criteria for evaluation of bids are expressed in two or more currencies, for the purpose of evaluating and comparing bids, the bid prices of all bids shall be converted to the currency specified in the bidding documents according to the rate set out in those documents, pursuant to clause (q) of section 87.
- (5) Whether or not it has engaged in a pre-qualification process pursuant to section 49, the procuring entity may require the bidder presenting the bid that has been found to be the successful bid pursuant to clause (b) of sub-section (3) of this section to

demonstrate its qualifications again, in accordance with the criteria and procedures conforming to the provisions of section 41. The criteria and procedures to be used for such further demonstration shall be set out in the bidding documents. Where a pre-qualification process has been engaged in, the criteria shall be the same as those used in the pre-qualification process.

(6) If the bidder presenting the successful bid is requested to demonstrate its qualifications again in accordance with sub-section (5) of this section but fails to do so, the procuring entity shall reject that bid and shall select the next successful bid from among those remaining in effect, in accordance with sub-section (3) of this section, subject to the right of the procuring entity to cancel the procurement in accordance with sub-section (1) of section 50.

(7) In case two or more eligible bidders offer the lowest bid price, the procuring entity shall, without affecting the validity of the bids, invite such bidders to submit a reduced bid price in a sealed cover and in the event of no response or a continuing tie, the successful bidder shall be determined by a draw of lots.

Prohibition of negotiations with bidders

93. No negotiations shall take place between the procuring entity and a bidder with respect to a bid presented by the bidder. Provided, however, that the procuring entity may, in its discretion, negotiate the bid price where only one responsive bid has been received.

CHAPTER VII

PROCEDURES FOR RESTRICTED BIDDING, REQUEST FOR PROPOSALS ETC.

Restricted bidding

94. (1) Where the procuring entity engages in procurement by means of restricted bidding in the conditions specified in section 70, it shall invite bids in accordance with the provisions of sub-sections (1) and (5) of section 82.

(2) The provisions of chapter VI, except for sections 84 to 86, shall apply to a restricted bidding process.

Request for quotations

95. (1) Where the procuring entity engages in procurement by means of request for quotations in the conditions specified in section 71, it shall request quotations in accordance with the provisions of sub-section (2) of section 82. Each bidder from which a quotation is requested shall be informed whether any elements other than the charges for the subject matters of the procurement themselves, such as any applicable transportation and insurance charges, duties and taxes, are to be included in the price.

(2) Each bidder is permitted to give only one price quotation and is not permitted to change its quotation. No negotiations shall take place between the procuring entity and a bidder with respect to a quotation presented by the bidder.

(3) The successful quotation shall be the lowest-priced quotation meeting the needs of the procuring entity as set out in the request for quotations.

Request for proposals without negotiation

96. (1) Where the procuring entity engages in procurement by means of request for proposals without negotiations in the conditions specified in section 72, it shall invite proposals by causing an invitation to participate in the request for proposals process to be published in accordance with sub-section (1) of section 83, unless an exception provided for in that section applies.

- (2) The invitation shall include:
- (a) The name and address of the procuring entity;
 - (b) a detailed description of the subject matter of the procurement, in conformity with section 42, and the desired or required time and location for the provision of such subject matter;
 - (c) the terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;
 - (d) the criteria and procedures to be used for ascertaining the qualifications of bidders and any documentary evidence or other information that must be presented by the bidders to demonstrate their qualifications, in conformity with section 41;
 - (e) the criteria and procedures for opening the proposals and for examining and evaluating the proposals in accordance with sections 42 and 43, including the minimum requirements with respect to technical, quality and performance characteristics that proposals must meet in order to be considered responsive in accordance with section 42, and a statement that proposals that fail to meet those requirements will be rejected as non-responsive;
 - (f) a declaration pursuant to section 40;
 - (g) the means of obtaining the request for proposals and the place where it may be obtained;
 - (h) the price, if any, charged by the procuring entity for the request for proposals;
 - (i) if a price is charged for the request for proposals, the means and currency of payment for the request for proposals; and
 - (j) the manner, place and deadline for presenting proposals.

- (3) The procuring entity shall issue the request for proposals:
 - (a) Where an invitation to participate in the request for proposals process has been published in accordance with the provisions of sub-section (1) of section 83, to each bidder that responds to the invitation in accordance with the procedures and requirements specified therein;
 - (b) in the case of pre-qualification, to each bidder pre-qualified in accordance with section 49; and
 - (c) in the case of direct invitation under sub-section (2) of section 83, to each bidder selected by the procuring entity;

and that pays the price, if any, charged for the request for proposals. The price that the procuring entity may charge for the request for proposals shall ordinarily reflect the cost of providing it to the bidders.

(4) The request for proposals shall include, in addition to the information referred to in clauses (a) to (e) and (j) of sub-section (2) of this section, the following information:

- (a) Instructions for preparing and presenting proposals, including instructions to bidders to present simultaneously to the procuring entity proposals in two envelopes: one envelope containing the technical, quality and performance characteristics of the proposal or the qualifications and experience of the bidders, as the case may be, and the other envelope containing the financial aspects of the proposal;
- (b) if bidders are permitted to present proposals for only a portion of the subject matter of the procurement, a description of the portion or portions for which proposals may be presented;
- (c) the currency that will be used for the purpose of evaluating proposals pursuant to sub-section (4) of section 92, and either the exchange rate that will be used for the conversion of bid prices into that currency or a

statement that the rate published by a specified financial institution prevailing on a specified date will be used;

- (d) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- (e) the means by which, pursuant to section 46, bidders may seek clarifications of the request for proposals, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of bidders;
- (f) references to this Act, the Procurement Rules and other laws directly pertinent to the bid process;
- (g) the name, functional title and address of one or more officers of the procuring entity who are authorised to communicate directly with and to receive communications directly from the bidders in connection with the bid process, without the intervention of an intermediary;
- (h) notice of the right provided under this Act to file a review or appeal against decisions or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Act;
- (i) any formalities that will be required once the successful proposal has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract, and approval by another authority, pursuant to section 54, and the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval; and
- (j) any other requirements that may be established by the procuring entity in conformity with this Act and the Procurement Rules relating to the preparation and presentation of proposals and to the bid process.

(5) Before opening the envelopes containing the financial aspects of the proposals, the procuring entity shall examine and evaluate the technical, quality and performance characteristics of proposals in accordance with the criteria and procedures specified in the request for proposals.

(6) The results of the examination and evaluation of the technical, quality and performance characteristics of the proposals shall be immediately included in the record of the bid process.

(7) The proposals whose technical, quality and performance characteristics fail to meet the relevant minimum requirements shall be considered to be non-responsive and shall be rejected on that ground. A notice of rejection and the reasons for the rejection, together with the unopened envelope containing the financial aspects of the proposal, shall be promptly dispatched to each respective bidder whose proposal was rejected.

(8) The proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive. The procuring entity shall promptly communicate to each bidder presenting such a proposal the score of the technical, quality and performance characteristics of its respective proposal. The procuring entity shall invite all such bidders to the opening of the envelopes containing the financial aspects of their proposals.

(9) The score of the technical, quality and performance characteristics of each responsive proposal and the corresponding financial aspect of that proposal shall be read out in the presence of the bidders invited in accordance with sub-section (8) of this section to the opening of the envelopes containing the financial aspects of the proposals.

(10) The procuring entity shall compare the financial aspects of the responsive proposals and on that basis identify the successful proposal in accordance with the criteria and the procedure set out in the request for proposals. The successful proposal shall be the proposal with the best combined evaluation in terms of the criteria other than price specified in the request for proposals and the price.

CHAPTER VIII

PROCEDURES FOR TWO-STAGE BIDDING, SINGLE-SOURCE PROCUREMENT ETC.

Two-stage bidding

97. (1) Where the procuring entity engages in procurement by means of two-stage bidding in the conditions specified in section 73, the provisions of chapter VI shall apply, except to the extent those provisions are derogated from in this section.

(2) The bidding documents shall call upon bidders to present, in the first stage of the two-stage bidding, initial submissions containing their applications or proposals without a bid price. The bidding documents may, to the extent necessary, invite applications or proposals relating to the technical, quality or performance characteristics of the subject matter of the procurement as well as to contractual terms and conditions of supply, and, where relevant, the professional and technical competence, experience and qualifications of the bidders. The procuring entity may, while inviting proposals, specify its particular requirements and the terms relating to the procurement and invite bidders to either convey their acceptance or suggest modifications, as the case may be.

(3) The procuring entity may, in the first stage, engage in discussions with bidders whose initial proposals have not been rejected pursuant to the provisions of this Act, concerning any aspect of their initial proposals. When the procuring entity engages in discussions with any bidder, it shall extend an equal opportunity to participate in discussions to all bidders. At the conclusion of the first stage, the procuring entity shall pre-qualify the bidders that fulfil the eligibility criteria, and the provisions of section 49 shall apply to the pre-qualification process, except to the extent that those provisions are derogated from this section.

(4) For the purpose of promoting effective competition by limiting the number of bidders from which to request bids, in the second stage of the two-stage bidding, the procuring entity may engage in a shortlisting process. The provisions of section 49 shall apply *mutatis mutandis* to the pre-qualification and shortlisting process, except to the extent that those provisions are derogated from in this sub-section:

- (a) The procuring entity shall specify in the pre-qualification documents that it will request proposals only from a limited number of shortlisted bidders that best meet the qualification criteria specified in the pre-qualification documents;
- (b) the pre-qualification documents shall set out the maximum number of shortlisted bidders, not exceeding 7, from which the proposals will be requested and the manner in which the selection of that number will be carried out. In establishing such a number the procuring entity shall bear in mind the need to ensure the effective competition;
- (c) the procuring entity shall rate the bidders that meet the criteria specified in the pre-qualification documents according to the manner of rating that is set out in the invitation to pre-qualify and the pre-qualification documents;
- (d) the procuring entity shall shortlist bidders that acquired the best rating up to the maximum number indicated in the pre-qualification documents but at least three if possible; and
- (e) the procuring entity shall promptly notify each bidder whether or not it has been pre-qualified and shortlisted and shall upon request communicate to the bidders that have not been shortlisted the reasons therefor. It shall, upon request, make available to any person interested in the procurement, the names of all bidders that have been pre-qualified and shortlisted.

(5) In the second stage of the two-stage bidding, the procuring entity shall issue the request for proposals with bid prices to each pre-qualified and shortlisted bidder in accordance with the procedures and requirements specified in the pre-qualification documents on payment of the price, if any, charged for the request for proposals. The price that the procuring entity may charge for the request for proposals shall ordinarily reflect the cost of providing it to bidders.

(6) The request for proposals with bid prices referred to in sub-section (5) of this section shall be issued within a reasonable time, but no later than 120 days from the

deadline that was specified by the procuring entity for submitting the proposals under sub-section (2) of this section:

Provided, however, that for reasons to be recorded in writing and communicated to all the bidders before the expiry of the said 120 days, the procuring entity may extend the aforesaid period by upto 60 days and in the event an invitation to submit bids is not issued within such extended period, the proposals submitted under sub-section (2) of this section shall lapse, and may be re-submitted, with or without modifications, by the respective bidders only in response to a fresh invitation, if any.

- (7) (a) After issuing the request for proposals under sub-section (5) of this section, the procuring entity may engage in pre-bid meetings with the bidders for discussion on any aspect of the particular procurement and shall invite all bidders whose initial proposals were not rejected at the first stage to present final bids with prices in response to a revised set of terms and conditions for the procurement.
- (b) In revising the relevant terms and conditions of the procurement, the procuring entity may not modify the subject matter of the procurement but may refine aspects of the description of the subject matter of the procurement by:
 - (i) Deleting or modifying any aspect of the technical, quality or performance characteristics of the subject matter of the procurement initially provided, and by adding any new characteristics that conform to the requirements of this Act; or
 - (ii) deleting or modifying any criterion for examining or evaluating bids initially provided, and by adding any new criterion that conforms to the requirements of this Act, to the extent only that the deletion, modification or addition is required as a result of changes made in the technical, quality or performance characteristics of the subject matter of the procurement;

- (c) Any deletion, modification or addition made pursuant to clause (b) of this sub-section shall be communicated to the bidders in the invitation to present final bids.
- (d) A bidder not wishing to present a final bid may withdraw from the bid process without forfeiting any bid security that the bidder may have been required to provide.
- (e) The final bids shall be evaluated in order to ascertain the successful bid as defined in section clause (b) of sub-section (3) of 92.

Request for proposals with dialogue

98. (1) Where the procuring entity engages in procurement by means of request for proposals with dialogue in the conditions specified in section 74, it shall invite proposals by causing an invitation to participate in the request for proposals with dialogue to be published in accordance with sub-section (1) of section 83, unless an exception provided for in that section applies.

- (2) The invitation shall include:
 - (a) The name and address of the procuring entity;
 - (b) a description of the subject matter of the procurement to the extent known, and the desired or required time and location for the provision of such subject matter;
 - (c) the terms and conditions of the procurement contract, to the extent that they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;
 - (d) the intended stages of the procedure;
 - (e) the criteria and procedures to be used for ascertaining the qualifications of bidders and any documentary evidence or other information that must be presented by the bidders to demonstrate their qualifications, in conformity with section 41;

- (f) the minimum requirements that proposals must meet in order to be considered responsive in accordance with section 42, and a statement that proposals that fail to meet those requirements will be rejected as non-responsive;
- (g) a declaration pursuant to section 40;
- (h) the means of obtaining the request for proposals and the place where it may be obtained;
- (i) the price, if any, charged by the procuring entity for the request for proposals and the means of payment; and
- (j) the manner, place and deadline for presenting proposals.

(3) For the purpose of limiting the number of bidders from which to request proposals, the procuring entity may engage in pre-selection process. The provisions of section 49 shall apply *mutatis mutandis* to the pre-selection process, except to the extent that those provisions are derogated from in this sub-section:

- (a) The procuring entity shall specify in the pre-selection documents that it will request proposals only from a limited number of pre-selected bidders that best meet the qualification criteria specified in the pre-selection documents;
- (b) the pre-selection documents shall set out the maximum number of pre-selected bidders from which the proposals will be requested and the manner in which the selection of that number will be carried out. In establishing such a number the procuring entity shall bear in mind the need to ensure the effective competition;
- (c) the procuring entity shall rate the bidders that meet the criteria specified in the pre-selection documents according to the manner of rating that is set out in the invitation to pre-selection and the pre-selection documents.

- (d) the procuring entity shall pre-select bidders that acquired the best rating up to the maximum number indicated in the pre-selection documents but at least three if possible; and
 - (e) the procuring entity shall promptly notify each bidder whether or not it has been pre-selected and shall upon request communicate to bidders that have not been pre-selected the reasons therefor. It shall make available to any person, upon request, the names of all bidders that have been pre-selected.
- (4) The procuring entity shall issue the request for proposals:
- (a) Where an invitation to participate in the request for proposals with dialogue process has been published in accordance with the provisions of sub-section (1) of section 83, to each bidder that responds to the invitation in accordance with the procedures and requirements specified therein;
 - (b) in the case of pre-qualification, to each bidder pre-qualified in accordance with section 49;
 - (c) in case of registered bidders, to each bidder pre-qualified and registered in accordance with section 58;
 - (d) where pre-selection process have been engaged in, to each pre-selected bidder in accordance with the procedures and requirements specified in the pre-selection documents; or
 - (e) in the case of direct invitation under sub-section (2) of section 83, to each bidder selected by the procuring entity;

that pays the price, if any, charged for the request for proposals. The price that the procuring entity may charge for the request for proposals shall ordinarily reflect the cost of providing it to bidders.

(5) The request for proposals shall include, in addition to the information referred to in clauses (a) to (f) and (j) of sub-section (2) of this section, the following information:

- (a) Instructions for preparing and presenting proposals;
- (b) if bidders are permitted to present proposals for only a portion of the subject matter of the procurement, a description of the portion or portions for which proposals may be presented;
- (c) when bid prices or other qualification criteria for evaluation of bids are expressed in two or more currencies, the currency that will be used for the purpose of evaluating proposals, and either the exchange rate that will be used for the conversion of bid prices into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (d) the manner in which the bid price is to be formulated or expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement, such as reimbursement for transportation, lodging, insurance, use of equipment, duties or taxes;
- (e) the means by which, pursuant to section 46, bidders may seek clarifications of the request for proposals, and a statement as to whether the procuring entity intends, at this stage, to convene a meeting of bidders;
- (f) any elements of the description of the subject matter of the procurement or term or condition of the procurement contract that will not be the subject of dialogue during the bid process;
- (g) where the procuring entity intends to limit the number of bidders that it will invite to participate in the dialogue, the minimum number of bidders, which shall be not lower than three, if possible, and, where appropriate, the maximum number and the criteria and procedure, in conformity with the provisions of this Act, that will be followed in selecting it;
- (h) the criteria and procedure for evaluating the proposals in accordance with section 43;

- (i) references to this Act, the Procurement Rules and other laws directly pertinent to the bid process;
 - (j) the name, functional title and address of one or more officers of the procuring entity who are authorised to communicate directly with and to receive communications directly from bidders in connection with the bid process, without the intervention of an intermediary;
 - (k) notice of the right provided under this Act to file a review petition or appeal against decisions or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Act;
 - (l) any formalities that will be required once the successful offer has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract, and approval by another authority, pursuant to section 54, and the estimated period of time following dispatch of the notice of acceptance that will be required to obtain the approval; and
 - (m) any other requirements that may be established by the procuring entity in conformity with this Act and the Procurement Rules relating to the preparation and presentation of proposals and to the bid process.
- (6) (a) The procuring entity shall examine all proposals received against the established minimum requirements and shall reject each proposal that fails to meet these minimum requirements on the ground that it is non-responsive;
- (b) Where the limitation on the number of bidders that can be invited to participate in the dialogue was established and the number of responsive proposals exceeds that maximum, the procuring entity shall select the maximum number of responsive proposals in accordance with the criteria and procedure specified in the request for proposals;

(c) A notice of rejection and the reasons for the rejection shall be promptly dispatched to each respective bidder whose proposal was rejected.

(7) The procuring entity shall invite each bidder that presented a responsive proposal, within any applicable maximum, to participate in dialogue. The procuring entity shall ensure that the number of bidders invited to participate in the dialogue is sufficient to ensure effective competition, and shall be at least three, if possible.

(8) The dialogue shall be conducted by the same representatives of the procuring entity on a concurrent basis.

(9) During the course of the dialogue, the procuring entity shall not modify the subject matter of the procurement, nor any qualification or evaluation criterion, nor any minimum requirements established pursuant to clause (f) of sub-section (2) of this section, nor any elements of the description of the subject matter of the procurement or term or condition of the procurement contract that is not subject to the dialogue as notified in the request for proposals.

(10) Any requirements, guidelines, documents, clarifications or other information generated during the dialogue that are communicated by the procuring entity to a bidder shall be communicated at the same time on an equal basis to all other participating bidders, unless they are specific or exclusive to that bidder, or such communication would be in breach of the confidentiality provisions of section 56.

(11) Following the dialogue, the procuring entity shall request all bidders remaining in the bid process to present a best and final bid with respect to all aspects of their proposals. The request shall be in writing, and shall specify the manner, place and deadline for presenting best and final bids.

(12) No negotiations shall take place between the procuring entity and bidders with respect to their best and final bids.

(13) The successful bid shall be the bid that best meets the needs of the procuring entity as determined in accordance with the criteria and procedure for evaluating the proposals set out in the request for proposals.

Request for proposals with consecutive negotiations

99. (1) Where the procuring entity engages in procurement by means of request for proposals with consecutive negotiations in the conditions specified in section 75, the provisions of sub-sections (1) to (7) of section 96 shall apply *mutatis mutandis*, except to the extent those provisions are derogated from in this section.

(2) The proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive. The procuring entity shall rank each responsive proposal in accordance with the criteria and procedure for evaluating proposals as set out in the request for proposals, and shall:

- (a) promptly communicate to each bidder presenting the responsive proposal the score of the technical and quality characteristics of its respective proposal and its ranking;
- (b) invite the bidder that has attained the best ranking in accordance with those criteria and procedure for negotiations on the financial aspects of its proposal; and
- (c) inform other bidders that presented responsive proposals that they may be considered for negotiation if the negotiations with the bidders with a better ranking do not result in a procurement contract.

(3) If it becomes apparent to the procuring entity that the negotiations with the bidder invited pursuant to clause (b) of sub-section (2) of this section will not result in a procurement contract, the procuring entity shall inform that bidder that it is terminating the negotiations.

(4) The procuring entity shall then invite for negotiations the bidder that attained the second best ranking; if the negotiations with that bidder do not result in a procurement contract, the procuring entity shall invite the other bidders still participating in the bid process for negotiations on the basis of their ranking until it arrives at a procurement contract or rejects all remaining proposals.

(5) During the course of the negotiations, the procuring entity shall not modify the subject matter of the procurement, nor any qualification, examination or evaluation criterion, including any established minimum requirements, nor any elements of the description of the subject matter of the procurement or term or condition of the procurement contract other than financial aspects of proposals that are subject to the negotiations as notified in the request for proposals.

(6) The procuring entity may not reopen negotiations with any bidder with which it has terminated negotiations.

Competitive negotiations

100. (1) Where the procuring entity engages in procurement by means of competitive negotiations in the conditions specified in section 76, the provisions of subsections (3), (5) and (6) of section 82 shall apply to the procedure preceding the negotiations.

(2) Any requirements, guidelines, documents, clarifications or other information relative to the negotiations that are communicated by the procuring entity to a bidder before or during the negotiations shall be communicated on an equal basis to all other bidders engaging in negotiations with the procuring entity relative to the procurement, unless they are specific or exclusive to that bidder, or such communication would be in breach of the confidentiality provisions of section 56.

(3) Following completion of negotiations, the procuring entity shall request all bidders remaining in the bid process to present, by a specified date, a best and final bid with respect to all aspects of their proposals.

(4) No negotiations shall take place between the procuring entity and bidders with respect to their best and final bids.

(5) The successful bid shall be the bid that best meets the needs of the procuring entity.

Single-source procurement

101. Where the procuring entity engages in procurement by means of single-source procurement in the conditions specified in sub-section (1) of section 77 of the Act, the provisions of sub-sections (4) to (6) of section 82 shall apply to the procedure preceding the invitation of a proposal or price quotation from a single bidder. The procuring entity shall engage in negotiations with the bidder from which a proposal or price quotation is invited unless such negotiations are not feasible in the circumstances of the procurement concerned. Procurement of the services specified in sub-section (2) of section 77 may be undertaken in accordance with the procedure specified in that sub-section.

Direct Purchase from retail network

102. (1) In the circumstances, set forth in section 78, a procuring entity may undertake procurement by means of direct purchase of commercially available goods and services in accordance with the procedure, conditions and manner to be prescribed in the Procurement Rules, if the officer authorised to do so determines that the price for the purchase is reasonable.

(2) The Procurement Rules to be notified under sub-section (1) of this section may *inter alia* provide for delegation of authority, nature of goods and services to be procured, determination of their price, manner of procurement, inspection, warranties, terms of payment, and such other matters as may be necessary.

CHAPTER IX

ELECTRONIC REVERSE AUCTIONS

Electronic reverse auction as a stand-alone method

103. (1) Where the procuring entity engages in procurement by means of electronic reverse auction in the conditions specified in section 79, it shall invite bids by causing an invitation to the electronic reverse auction to be published in accordance with the provisions of section 81. The invitation shall include:

- (a) The name and address of the procuring entity;
- (b) a detailed description of the subject matter of the procurement, in conformity with section 42 and the desired time and location for the provision of such subject matter;
- (c) the terms and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the contract form, if any, to be signed by the parties;
- (d) a declaration pursuant to section 40;
- (e) the criteria and procedures to be used for ascertaining the qualifications of bidders and any documentary evidence or other information that must be presented by the bidders to demonstrate their qualifications in conformity with section 41;
- (f) the criteria and procedure for examining bids against the description of the subject matter of the procurement;
- (g) the criteria and procedure for evaluating bids in accordance with section 43, including any mathematical formula that will be used in the evaluation procedure during the auction;
- (h) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than

the cost of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, duties and taxes;

- (i) the minimum number of bidders required to register for the auction in order for the auction to be held, which shall be sufficient to ensure effective competition;
- (j) if any limitation on the number of bidders that can be registered for the auction is imposed in accordance with sub-section (2) of this section, the relevant maximum number and the criteria and procedure, in conformity with sub-section (2) of this section, that will be followed in selecting it;
- (k) how the auction can be accessed, including appropriate information for connection to the auction;
- (l) the deadline by which the bidders shall register for the auction and the requirements for registration;
- (m) the date and time of the opening of the auction and the requirements for identification of bidders at the opening of the auction;
- (n) the criteria governing the closing of the auction;
- (o) other rules for the conduct of the auction, including the information that will be made available to the bidders in the course of the auction, and the conditions under which the bidders will be able to bid;
- (p) references to this Act, the Procurement Rules and other laws directly pertinent to the bid process;
- (q) the means by which bidders may seek clarifications of information relating to the bid process;
- (r) the name, functional title and address of one or more officers of the procuring entity who are authorised to communicate directly with and to receive communications directly from the bidders in connection with the

bid process before and after the auction, without the intervention of an intermediary;

- (s) notice of the right provided under this Act to file a review petition or appeal against actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Act;
- (t) any formalities that will be required after the auction for a procurement contract to enter into force, including, where applicable, ascertainment of qualifications or responsiveness in accordance with section 107 and the execution of a written procurement contract pursuant to section 54; and
- (u) any other requirements established by the procuring entity in conformity with this Act and the Procurement Rules relating to the bid process.

(2) The procuring entity may impose a maximum number of bidders that can be registered for the electronic reverse auction only to the extent that capacity limitations in its communication system so require, and select the bidders to be so registered, in a non-discriminatory manner. The procuring entity shall include a statement of the reasons and circumstances upon which it relied to justify the imposition of such a maximum in the record required under section 57.

(3) The procuring entity may decide in the light of the circumstances of the given procurement that the electronic reverse auction shall be preceded by an examination or evaluation of initial bids. In such case, the invitation to the auction shall, in addition to information listed in sub-section (1) of this section, include:

- (a) An invitation to present initial bids together with the instructions for preparing initial bids; and
- (b) the manner, place and deadline for presenting initial bids.

(4) Where the electronic reverse auction has been preceded by the examination or evaluation of initial bids, the procuring entity shall promptly after the completion of the examination or evaluation of initial bids:

- (a) Dispatch the notice of rejection and reasons for rejection to each bidder whose initial bid was rejected;
- (b) issue an invitation to the auction to each qualified bidder whose initial bid is responsive, providing all information required to participate in the auction; and
- (c) where an evaluation of initial bids has taken place, each invitation to the auction shall also be accompanied by the outcome of the evaluation as relevant to the bidder to which the invitation is addressed.

Electronic reverse auction as a phase preceding contract award

104. (1) Where an electronic reverse auction is to be used as a phase preceding the award of the procurement contract in a procurement method, as appropriate, or in a framework agreement procedure with second-stage competition, the procuring entity shall notify the bidders when first inviting their participation in the bid process, that an auction will be held and shall provide, in addition to other information required to be included under provisions of this Act, the following information about the auction:

- (a) The mathematical formula that will be used in the evaluation procedure during the auction; and
- (b) how the auction can be accessed, including appropriate information for connection to the auction.

(2) Before the electronic reverse auction is held, the procuring entity shall issue an invitation to the auction to all bidders remaining in the bid process specifying:

- (a) The deadline by which the bidders shall register for the auction and requirements for registration;
- (b) the date and time of the opening of the auction and requirements for identification of bidders at the opening of the auction;
- (c) criteria governing the closing of the auction; and

- (d) other rules for the conduct of the auction, including the information that will be made available to the bidders during the auction and the conditions under which the bidders will be able to bid.
- (3) Where an evaluation of initial bids has taken place, each invitation to the auction shall also be accompanied by the outcome of the evaluation as relevant to the bidder to which the invitation is addressed.

Registration and timing for the electronic reverse auction

105. (1) Confirmation of registration for the electronic reverse auction shall be communicated promptly to each registered bidder.

(2) If the number of bidder registered for the electronic reverse auction is insufficient to ensure effective competition, the procuring entity may cancel the auction. The cancellation of the auction shall be communicated promptly to each registered bidder.

(3) The period of time between the issuance of the invitation to the electronic reverse auction and the auction shall be sufficiently long to allow bidders to prepare for the auction, taking into account the reasonable needs of the procuring entity.

Requirements during the electronic reverse auction

106. (1) The electronic reverse auction shall be based on:

- (a) Price, where the procurement contract is to be awarded to the lowest priced bid; or
- (b) price and other criteria specified to bidders under section 103 and 104 of this Act, as the case may be, where the procurement contract is to be awarded to the bidder making the most advantageous bid.

(2) During the auction:

- (a) All bidders shall have an equal and continuous opportunity to present their bids;

- (b) there shall be automatic evaluation of all bids in accordance with the criteria, procedure and formula provided to the bidders under sections 103 and 104, as the case may be;
- (c) each bidder must receive, instantaneously and on a continuous basis during the auction, sufficient information allowing it to determine the standing of its bid vis-a-vis other bids;
- (d) there shall be no communication between the procuring entity and the bidders or among the bidders, other than as provided for in clauses (a) and (c) of this sub-section;
- (3) The procuring entity shall not disclose the identity of any bidder during the auction.
- (4) The auction shall be closed in accordance with the criteria specified to the bidders under sections 103 and 104, as the case may be;.
- (5) The procuring entity shall suspend or terminate the auction in the case of failures in its communication system that risk the proper conduct of the auction or for other reasons stipulated in the rules for the conduct of the auction. The procuring entity shall not disclose the identity of any bidder in the case of suspension or termination of the auction.

Requirements after the electronic reverse auction

107. (1) The bid that at the closure of the electronic reverse auction is the lowest priced bid or the most advantageous bid, as the case may be, shall be the successful bid.

(2) In procurement by means of an auction where the auction was not preceded by examination or evaluation of initial bids, the procuring entity shall ascertain after the auction the responsiveness of the successful bid and the qualifications of the bidder presenting it. The procuring entity shall reject that bid if it is found to be unresponsive or the bidder presenting it is found unqualified. Without prejudice to the right of the procuring entity to cancel the procurement in accordance with sub-section (1) of section 50, the procuring entity shall select the bid that was the next lowest priced or next most

advantageous bid at the closure of the auction, provided that such bid is ascertained to be responsive and the bidder presenting it is ascertained to be qualified.

(3) Where the successful bid at the closure of the auction appears to the procuring entity to be abnormally low and gives rise to concerns of the procuring entity as to the ability of the bidder that presented it to perform the procurement contract, the procuring entity may follow the procedures described in section 51. If the procuring entity rejects the bid as abnormally low under section 51, it shall select the bid that at the closure of the auction was the next lowest priced or next most advantageous bid. This provision is without prejudice to the right of the procuring entity to cancel the procurement in accordance with sub-section (1) of section 50.

CHAPTER X

FRAMEWORK AGREEMENTS

Award of a closed framework agreement

- 108.** (1) The procuring entity shall award a closed framework agreement:
- (a) by means of open competitive bidding, in accordance with provisions of chapter VI except to the extent that those provisions are derogated from in this chapter; or
 - (b) by means of other procurement methods, in accordance with the relevant provisions of chapters V, VII and VIII except to the extent that those provisions are derogated from in this chapter.
- (2) The provisions of this Act regulating pre-qualification and the contents of the invitation in the context of the procurement methods referred to in sub-section (1) of this section shall apply *mutatis mutandis* to the information to be provided to bidders when first inviting their participation in a closed framework agreement procedure. The procuring entity shall in addition specify at that stage:
- (a) That the procurement will be conducted as a framework agreement procedure, leading to a closed framework agreement;
 - (b) whether the framework agreement is to be concluded with one or more than one bidder;
 - (c) if the framework agreement will be concluded with more than one bidder, any minimum or maximum number of bidders that will be parties thereto;
 - (d) the form, terms and conditions of the framework agreement in accordance with section.
- (3) The provisions of section 54 of this Act shall apply *mutatis mutandis* to the award of a closed framework agreement.

Requirements of closed framework agreements

- 109.** (1) A closed framework agreement shall be concluded in writing and shall set out:
- (a) The duration of the framework agreement, which shall not exceed the maximum duration established by the Procurement Rules;
 - (b) the description of the subject matter of the procurement and all other terms and conditions of the procurement established when the framework agreement is concluded;
 - (c) to the extent that they are known, estimates of the terms and conditions of the procurement that cannot be established with sufficient precision when the framework agreement is concluded;
 - (d) whether in a closed framework agreement concluded with more than one bidder there will be a second-stage competition to award a procurement contract under the framework agreement and, if so:
 - (i) a statement of the terms and conditions of the procurement that are to be established or refined through second-stage competition;
 - (ii) the procedures for and the anticipated frequency of any second-stage and envisaged deadlines for presenting second-stage bids;
 - (iii) the procedures and criteria to be applied during the second-stage competition, including the relative weight of such criteria and the manner in which they will be applied, in accordance with sections 42 and 43. If the relative weights of the evaluation criteria may be varied during the second-stage competition, the framework agreement shall specify the permissible range;
 - (e) whether the award of a procurement contract under the framework agreement will be to the lowest priced or to the most advantageous bid; and
 - (f) the manner in which the procurement contract will be awarded.

(2) A closed framework agreement with more than one bidder shall be concluded as one agreement between all parties unless:

- (a) The procuring entity determines that it is in the interests of either party that separate agreements with each bidder party to the framework agreement be concluded; and
- (b) the procuring entity includes in the record required under section 57 a statement of the reasons and circumstances on which it relied to justify the conclusion of separate agreements; and
- (c) any variation in the terms and conditions of the separate agreements for a given procurement is minor and concerns only those provisions that justify the conclusion of separate agreements.

(3) The framework agreement shall in addition to information specified elsewhere in this section contain all information necessary to allow the effective operation of the framework agreement, including information on how the agreement and notifications of forthcoming procurement contracts thereunder can be accessed and appropriate information for connection where applicable.

Establishment of an open framework agreement

110. (1) The procuring entity shall establish and maintain an open framework agreement online.

(2) The procuring entity shall invite participation in the open framework agreement by causing an invitation to become a party to the open framework agreement to be published following the requirements of section 81.

(3) The invitation to become a party to the open framework agreement shall include the following information:

- (a) The name and address of the procuring entity that establishes and maintains the open framework agreement and the name and address of any other

- procuring entities that will have the right to award procurement contracts under the framework agreement;
- (b) that the procurement will be conducted as a framework agreement procedure leading to an open framework agreement;
 - (c) all information about the operation of the agreement, including how the agreement and notifications of forthcoming procurement contracts thereunder can be accessed and appropriate information for connection;
 - (d) the terms and conditions for bidders to be admitted to the open framework agreement, including:
 - (i) A declaration pursuant to section 40;
 - (ii) instructions for preparing and presenting indicative submissions necessary to become a party to the open framework agreement as well as the criteria and procedures to be used for ascertaining the qualifications of bidders and any documentary evidence or other information that must be presented by the bidders to demonstrate their qualifications in conformity with section 41; and
 - (iii) an explicit statement that bidders may apply to become parties to the framework agreement at any time during the period of its operation by presenting indicative submissions and any declaration made pursuant to section 40;
 - (e) other terms and conditions of the open framework agreement, including all information required to be set out in the open framework agreement in accordance with section 111;
 - (f) references to this Act, the Procurement Rules and other laws directly pertinent to the bid process;
 - (g) the name, functional title and address of one or more officers of the procuring entity who are authorised to communicate directly with and to

receive communications directly from bidders in connection with the bid process, without the intervention of an intermediary.

(4) Bidders may apply to become a party or parties to the framework agreement at any time during its operation by presenting indicative submissions to the procuring entity in compliance with the requirements of the invitation to become a party to the open framework agreement.

(5) The procuring entity shall examine all indicative submissions received during the period of operation of the framework agreement within a maximum of 21 days in accordance with the procedures set out in the invitation to become a party to the open framework agreement.

(6) The framework agreement shall be concluded with all qualified bidders that presented submissions unless their submissions have been rejected on the grounds specified in the invitation to become a party to the open framework agreement.

(7) The procuring entity shall promptly notify the bidders whether they have become parties to the framework agreement and of the reasons for the rejection of their indicative submissions if they have not.

Requirements of open framework agreements

111. (1) An open framework agreement shall provide for second-stage competition for the award of a procurement contract under the agreement and shall include:

- (a) The duration of the framework agreement;
- (b) the description of the subject matter of the procurement and all other terms and conditions of the procurement known when the open framework agreement is established;
- (c) any terms and conditions of the procurement that may be refined through second-stage competition;
- (d) the procedures and the anticipated frequency of second-stage competition;

- (e) whether the award of procurement contracts under the framework agreement will be to the lowest priced or the most advantageous bid;
- (f) the procedures and criteria to be applied during the second-stage competition, including the relative weight of the evaluation criteria and the manner in which they will be applied, in accordance with sections 42 and 43. If the relative weights of the evaluation criteria may be varied during second-stage competition, the framework agreement shall specify the permissible range.

(2) The procuring entity shall, during the entire period of operation of the open framework agreement, republish at least annually the invitation to become a party to the open framework agreement and shall in addition ensure unrestricted, direct and full access to the terms and conditions of the framework agreement and to any other necessary information relevant to its operation.

Second stage of a framework agreement procedure

112. (1) Any procurement contract under a framework agreement shall be awarded in accordance with the terms and conditions of the framework agreement and the provisions of this section.

(2) A procurement contract under a framework agreement may only be awarded to a bidder that is a party to the framework agreement.

(3) The provisions of section 54, except for its sub-section (2), shall apply to the acceptance of the successful bid under framework agreements without second-stage competition.

(4) In a closed framework agreement with second-stage competition and in an open framework agreement, the following procedures shall apply to the award of a procurement contract:

- (a) The procuring entity shall issue a written invitation to present submissions simultaneously:

- (i) to each bidder party to the framework agreement; or
 - (ii) only to each of those parties of the framework agreement then capable of meeting the needs of that procuring entity in the subject matter of the procurement, provided that, at the same time, notice of the second-stage competition is given to all parties to the framework agreement so that they have the opportunity to participate in the second-stage competition;
- (b) the invitation to bid shall include the following information:
- (i) A restatement of the existing terms and conditions of the framework agreement to be included in the anticipated procurement contract, a statement of the terms and conditions of the procurement that are to be subject to second-stage competition and further detail of these terms and conditions where necessary;
 - (ii) a restatement of the procedures and criteria for the award of the anticipated procurement contract (including their relative weight and the manner of their application);
 - (iii) instructions for preparing bids;
 - (iv) the manner, place and deadline for presenting the bids;
 - (v) if bidders are permitted to present bids for only a portion of the subject matter of the procurement, a description of the portion or portions for which bids may be presented;
 - (vi) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, duties and taxes;

- (vii) reference to this Act, the Procurement Rules and other laws directly pertinent to the bid process;
 - (viii) the name, functional title and address of one or more officers of the procuring entity who are authorised to communicate directly with and to receive communications directly from the bidders in connection with the second-stage competition, without the intervention of an intermediary;
 - (ix) notice of the right provided under this Act to file a review petition or appeal against decisions or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Act;
 - (x) any formalities that will be required once a successful bid has been accepted for a procurement contract to enter into force, including, where applicable, the execution of a written procurement contract pursuant to section 54;
 - (xi) any other requirements established by the procuring entity in conformity with this Act and the Procurement Rules thereunder relating to the preparation and presentation of bids and to other aspects of the second-stage competition;
- (c) the procuring entity shall evaluate all bids received and determine the successful bid in accordance with the evaluation criteria and the procedures set out in the invitation to bid; and
- (d) the procuring entity shall accept the successful bid in accordance with section 54.

Changes during the operation of a framework agreement

113. During the operation of a framework agreement, no change shall be allowed to the description of the subject matter of the procurement. Changes to other terms and conditions of the procurement, including to the criteria, and their relative weight and the manner of their application, and the procedures for the award of the anticipated

procurement contract, may occur only to the extent expressly permitted in the framework agreement.

Chapter XI

PUBLIC PRIVATE PARTNERSHIPS

Public-private partnership projects

114. (1) A procuring entity may procure the subject matter of the procurement for itself or for any specified users or class of users on payment of user charges, annuity or unitary payments, as the case may be, or in lieu of other consideration such as land or other natural resource, by entering into a concession agreement with the selected bidder for and in respect of a public-private partnership project.

(2) The terms and conditions of the PPP project shall be specified in the concession agreement in accordance with the provisions of section 116 and the applicable laws.

Method of procurement

115. Subject to such conditions as may be prescribed in the Procurement Rules, a PPP project shall be procured through a process of two-stage bidding in accordance with the provisions of sections 96, 97, 98, 99 or 100, or in conformity with the provisions of chapter IX.

Concession Agreement

116. (1) A concession agreement for a PPP project shall be formulated, signed and implemented in accordance with such conditions as may be prescribed in the Procurement Rules.

(2) A concession agreement shall specify the terms and conditions for and in respect of designing, financing, construction, operation and maintenance of the PPP project during the term of the concession and shall *inter alia* include:

- (a) obligations of the procuring entity and the concessionaire;
- (b) estimated capital cost;

- (c) user charges, annuity, unitary payments or other consideration, as the case may be;
- (d) provision of land;
- (e) specifications of works;
- (f) performance and service standards;
- (g) allocation of risks associated with construction and operation;
- (h) change in scope or specifications;
- (i) change in law;
- (j) force majeure;
- (k) penalties, damages and compensation for default and breach of the terms of the concession agreement;
- (l) termination of the concession agreement;
- (m) transfer, if any, of the assets upon expiry of the concession; and
- (n) dispute resolution.

Enforcement of concession agreements

117. The head of the procuring entity shall, through regular monitoring, oversight and enforcement, procure that the concessionaire is diligently and faithfully discharging all its duties and obligations towards the procuring entity and the users in accordance with the provisions of the concession agreement, and shall in particular procure that the concessionaire is:

- (a) conforming to the performance standards specified in the concession agreement;
- (b) ensuring the safety of users and the public;
- (c) making payments as and when due to the procuring entity; and
- (d) recovering from users only such fee or charges as may be due under the applicable laws and the concession agreement.

Award of PPP projects

118. A PPP project shall be awarded in accordance with the provisions of laws that are applicable to the subject of such project and where the applicable laws do not have provision for a PPP project, the procuring entity may award a PPP project under and in accordance with the provisions of this Act and the rules made thereunder, and the concession agreement for such project shall be governed by the provisions of this Act, the Indian Contract Act, 1872 and other applicable laws.

Right to Information

119. Any person may, upon application under the provisions of the Right to Information Act, 2005, require the concessionaire of a PPP project to provide any information that is relevant to the interests of the Government, any public entity or the users of the PPP project, and for the purposes of providing such information, the concessionaire shall be deemed to be a public authority under clause (h) of section 2 of that Act.

Audit of accounts

120. (1) If any income, revenue, investment or expenditure in respect of a PPP project has any material effect on the income or revenue of the procuring entity or on any fee, charge, price or expenditure to be borne by the procuring entity or any user of that PPP project, the Comptroller and Auditor-General of India may, *suo motu* or upon request of a procuring entity, audit such of the accounts of the income, revenue, investment or expenditure of the concessionaire that may have a bearing on the interests of the Government, any public entity and the users of that PPP project, and for the purposes of such audit, the concessionaire shall have the duties and obligations of a Government company under the provisions of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 and other applicable laws.

(2) The Comptroller and Auditor-General of India and any person appointed by him in connection with the auditing of the accounts of the concessionaire under this section shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the

accounts of government companies, and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the concessionaire.

CHAPTER XII

TRIBUNAL FOR PUBLIC PROCUREMENT

Constitution of the Tribunal

121. (1) The Government shall, by notification, establish one or more Tribunals to be known as the Tribunal for Public Procurement to hear appeals against the orders of the Authority under this Act.

(2) The Tribunal shall consist of a chairperson and at least three other members to be appointed by the Government from among the persons recommended by the selection committee referred to in section 123:

Provided that the Government shall appoint such additional members as may be necessary from time to time for enabling the Tribunal to dispose of the appeals before it within the period specified in sub-section (8) of section 130.

(3) Subject to the provisions of this Act,-

(a) the jurisdiction of the Tribunal may be exercised by benches thereof;

(b) a bench may be constituted by the chairperson with two or more members of the Tribunal as the chairperson may deem fit:

Provided that every such bench shall include at least one Judicial Member and one Non-Judicial Member; and

(c) the benches shall ordinarily sit at Delhi and at such other places as the Government may, in consultation with the chairperson, notify;

(4) Notwithstanding anything contained in sub-section (3), the chairperson of the Tribunal may transfer a member of the Tribunal from one bench to another bench.

Explanation:- For the purposes of this chapter,-

(i) Judicial Member means a member of the Tribunal who has been a Judge of a High Court, and includes the chairperson of the Tribunal; and

(ii) Non-Judicial Member means a member of the Tribunal who is not a Judicial Member.

(5) Where benches are constituted, the chairperson of the Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Tribunal amongst the benches and also provide for the matters which may be dealt with by each bench.

(6) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the chairperson of the Tribunal may transfer any case pending before one bench, for disposal, to any other bench.

(7) The headquarters of the Tribunal shall be at Delhi.

Qualifications for appointment of chairperson and member

122. A person shall not be qualified for appointment as the chairperson or a member of the Tribunal unless he -

- (a) in the case of the chairperson of the Tribunal, is, or has been, a judge of the Supreme Court or the Chief Justice of a High Court; and
- (b) in the case of a Judicial Member of the Tribunal, is, or has been, a Judge of a High Court; and
- (c) in case of a Non-Judicial Member of the Tribunal, is, or has been, a Secretary to the Central Government or an equivalent thereof in a ministry or department dealing with finance, commerce or infrastructure;

Constitution of Selection Committee

123. (1) The Government shall, for the purposes of selecting the chairperson and Judicial Member, constitute a Selection Committee consisting of –

- (a) a Judge of the Supreme Court to be nominated by the Chief Justice of India;

- (b) a member of the Union Public Service Commission to be nominated by its chairperson; and
- (c) Secretary-in-charge of the Ministry or Department of the Central Government dealing with Legal Affairs who shall also be the convenor of the Selection Committee.

(2) The Government shall, for the purposes of selecting a Non-Judicial Member, constitute a Selection Committee consisting of –

- (a) the Cabinet Secretary..... Chairman;
- (b) the Chief Vigilance Commissioner..... Member;
- (c) Chairperson of the Public Enterprises Selection BoardMember;
- (d) a member of the Union Public Service Commission nominated by its chairperson Member; and
- (e) Secretary-in-charge of the Department of Expenditure of the Central Government who shall also be the convenor of the Selection Committee.

(3) The Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal and six months before the superannuation or end of tenure of the chairperson or member of the Tribunal, as the case may be, make a reference to the Selection Committee for filling up of the vacancy.

(4) The Selection Committee shall finalise the selection of the chairperson or member, referred to in sub-section (3) within two months from the date on which the reference is made to it.

(5) The Selection Committee may invite applications and nominations, or identify suitable candidates *suo moto*, and after considering all the candidates, it shall recommend a panel of three names, in alphabetical order, for every vacancy referred to it.

(6) Before recommending any person for appointment as chairperson or member of the Tribunal, the Selection Committee shall satisfy itself that such person does

not have any financial or other interest which is likely to affect prejudicially his functions in the Tribunal.

(7) No appointment of the chairperson or member shall be invalid merely by reason of any vacancy in the Selection Committee:

(8) The panel of names recommended by the Selection Committee shall be considered by an Appointments Committee comprising the Prime Minister, the Union Minister of Finance and the Leader of Opposition in the Lok Sabha which shall select a person from such panel and recommend him for appointment by the President of India.

Terms and conditions of service

124. (1) The chairperson or a member of the Tribunal shall hold office as such for a term of four years from the date on which he enters upon his office and shall not be eligible for re-appointment:

Provided that no chairperson or member of the Tribunal shall hold office as such after he has attained the age of sixty-five years.

(2) The salary and allowances payable to, and the other terms and conditions of service of, the chairperson of the Tribunal and members of the Tribunal shall be such as may be prescribed by the Government:

Provided that the salary and allowances or the other terms and conditions of service of the chairperson of the Tribunal or a member of the Tribunal, including housing, transport and other perquisites, shall not be inferior compared to those specified for a judge of the Delhi High Court nor shall they be varied to his disadvantage after appointment.

(3) The chairperson or members of the Tribunal shall not hold any other office.

Vacancies

125. (1) If, for reason other than temporary absence, any vacancy occurs in the office of the chairperson or member of the Tribunal, the Government shall appoint

another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Tribunal.

(2) No act or proceedings of the Tribunal shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Tribunal.

Member to act as chairperson in certain circumstances

126. (1) In the event of the occurrence of any vacancy in the office of the chairperson of the Tribunal by reason of his death, resignation or otherwise, the senior-most Judicial Member of the Tribunal shall act as the chairperson of the Tribunal until the date on which a new chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the chairperson of the Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Judicial Member of the Tribunal shall discharge the functions of the chairperson of the Tribunal until the date on which the chairperson of the Tribunal resumes his duties.

Resignation and removal

127. (1) The chairperson or a member of the Tribunal may, by notice in writing under his hand addressed to the Government, resign his office:

Provided that the chairperson or a member of the Tribunal shall, unless he is permitted by the Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

(2) The Central Government may, in consultation with the Chief Justice of India, remove from office the chairperson or any other member of the Tribunal, who-

(a) has been adjudged an insolvent; or

- (b) has engaged at any time, during his terms of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Government, involves moral turpitude; or
- (d) has become physically or mentally incapable of acting as such chairperson or other member of the Tribunal; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such chairperson or member of the Tribunal; or
- (f) has so abused his position as to render his continuance in office prejudicial to the public interest.

(3) Notwithstanding anything contained in sub-section (2), no chairperson or member of the Tribunal shall be removed from his office on the ground specified in clause (e) or clause (f) of sub-section (2) except by an order made by the Government after an inquiry made in this behalf by a Judge of the Supreme Court, to be nominated by the Chief Justice of India, in which such chairperson or member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Officers and other employees of Tribunal

128. (1) The Government shall provide the Tribunal with such officers and other employees as it may deem fit.

(2) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the chairperson of the Tribunal.

(3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed by the Government.

Finances of the Tribunal

- 129.** (1) The Tribunal shall have its own Fund.
- (2) There shall be paid into the Fund of the Tribunal -
- (a) any grants and loans made by the government;
 - (b) all fees or other revenues received in accordance with the provisions of this Act; and
 - (c) all sums received from such other sources as may be decided upon by the Government.
- (3) The expense of the Tribunal shall be paid out of the Consolidated Fund of India to the extent that such payment is necessary to meet its expense after taking into account other revenues of the Tribunal.
- (4) The expense of the Tribunal shall include -
- (a) the remuneration of, and any travelling or other allowances payable to its members, officers, consultants and staff; and
 - (b) all expenses duly incurred in the exercise, performance and discharge of its powers, duties and functions under this Act.
- (5) The Tribunal shall prepare, in such form and in such manner and at such time in each year as may be prescribed, its budget for the next financial year, showing its estimated receipts and expenditure and forward the same to the Parliament, through the Government, for approval.
- (6) The Tribunal shall incur expenditure subject to the budget approved by the Parliament and may seek re-appropriation thereof or supplementary grants thereto as may be necessary.
- (7) Upon approval of the budget by the Parliament, the total amount so approved for the year shall be transferred by the Government to the Fund of the Tribunal

and the Tribunal shall be accountable to the Parliament and the Comptroller and Auditor-General of India for utilisation thereof.

(8) The Comptroller and Auditor-General shall examine the accounts of the Tribunal and furnish a report in accordance with sub-section (9) of this section-

- (a) stating whether it has or has not obtained all the information and explanations required by it;
- (b) stating whether the accounts referred to in the report are properly drawn up so as to exhibit a true and fair view of the affairs of the Tribunal; and
- (c) drawing attention to any item in the accounts which in its opinion may be of interest in any examination of the activities and accounts of the Tribunal.

Provided that the report of the Comptroller and Auditor-General of India shall be prepared only with respect to the matters relating to expenses and not with respect to policy review of regulatory decisions and orders passed by the Tribunal.

(9) The accounts of the Tribunal, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Government which shall cause the same to be laid, as soon as may be after it is received, before each House of Parliament.

(10) The Comptroller and Auditor-General of India and any person appointed by him in connection with the auditing of the accounts of the Tribunal under this Act shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Tribunal.

Appeal before the Tribunal

130. (1) Any person aggrieved by an order made by the Procuring Authority for and in respect of any procurement under this Act or the rules thereunder may prefer an appeal before the Tribunal.

(2) An appeal under sub-section (1) of this section shall be filed within a period of thirty days from the date on which a copy of the order made by the Procuring Authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(3) No later than five days from the date of receipt of the appeal, the Tribunal shall:

- (a) notify the procuring entity and all bidders participating in the bid process to which the appeal relates of the appeal and its substance;
- (b) suspend or decide not to suspend the bid process or the performance of a procurement contract or the operation of a framework agreement, as the case may be, and notify the same to the procuring entity and all bidders participating in the bid process to which the appeal relates of its decision; and
- (c) where it decides to suspend the bid process, the entry into force of the procurement contract or framework agreement or the performance of a procurement contract or the operation of a framework agreement, as the case may be, specify the period of the suspension for as long as it finds the suspension necessary to protect the interests of the appellant, unless it decides that urgent public interest considerations require the bid process, the procurement contract or the framework agreement, as the case may be, to proceed. The Tribunal may also order that any suspension applied be

extended or lifted, taking into account the aforementioned considerations;
and

- (d) where it decides not to suspend the bid process or the performance of a procurement contract or the operation of a framework agreement, as the case may be, it shall provide the reasons for its decision to the appellant, the procuring entity and all bidders.

(4) The Tribunal may dismiss the appeal, and shall lift any suspension applied, where it decides that:

- (a) The appeal is manifestly without merit or was not presented in compliance with the time-limit set out in sub-section (2) of this section; or
- (b) the appellant is without standing,

and shall promptly notify the appellant, the procuring entity and all bidders participating in the bid process of the dismissal and reasons therefor and that any suspension in force is lifted.

(5) Upon issue of notice by the Authority under sub-section (3) of this section to suspend the bid process, the entry into force of the procurement contract or framework agreement, the performance of the procurement contract or the operation of the framework agreement, as the case may be, the procuring entity shall suspend, or cause to be suspended, such bid process, the performance of such procurement contract or the operation of the framework agreement.

(6) No order for suspension of the bid process, performance of the procurement contract or operation of the framework agreement, as the case may be, or any other interim order that causes delay in such bid process or procurement shall be issued unless the appellant has given an undertaking to the Tribunal that upon final disposal of the appeal, he shall be liable to compensate the affected bidder or the procuring entity, as the case may be, for any loss or damage incurred by it as a consequence of such suspension or other interim order if it is held by the Tribunal that the plea for such suspension or interim order was frivolous, malafide or lacking in sufficient ground. The compensation

payable under this sub-section shall be determined by the Tribunal in a separate order to be issued after hearing the affected parties and may extend to ten per cent of the likely contract value of the procurement.

(7) On filing of an appeal under sub-section (1) of this section, the Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(8) An appeal filed under sub-section (1) shall be dealt with as expeditiously as possible and endeavour shall be made by the Tribunal to dispose of the appeal finally within one hundred and twenty days from the date of receipt of the appeal:

(9) Where any appeal can not be disposed off within the period of one hundred and twenty days specified in sub-section (8) of this section, the Tribunal shall record its reasons in writing for not disposing of the appeal within the said period and endeavour to dispose of the appeal finally within a further period not exceeding ninety days.

(10) The Tribunal may authorise any person, as it deems fit, to represent the interest of the users or consumers, if any, in the proceedings before it.

(11) The Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Authority under this Act, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

(12) No information shall be disclosed in appeal proceedings and no public hearing shall take place if doing so would impair the protection of national security interests, cause disclosure of classified information, impede law enforcement, prejudice the legitimate commercial interests of the bidders, would impede fair competition or contravene any law.

(13) Without prejudice to the foregoing provisions of this section, the Tribunal shall award the full costs of litigation to be paid to the aggrieved parties by the party against whom the appeal is decided. Provided, however, that for reasons to be recorded in writing, the Tribunal may waive the award of such costs or a part thereof.

(14) The order of the Tribunal shall be final unless it is modified or set aside in an appeal filed under section 138.

Appeal against arbitration awards

131. (1) Notwithstanding anything to the contrary contained in any law for the time being in force, an appeal against any order or award granted by an arbitration tribunal or any substitute thereof on any matter arising out of a procurement contract shall lie before the Tribunal constituted under section 121.

(2) An appeal under sub-section (1) of this section shall be filed within a period of thirty days from the date on which a copy of the order made by the arbitration tribunal is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(3) On filing of an appeal under sub-section (1) of this section, the Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) An appeal filed under sub-section (1) shall be dealt with as expeditiously as possible and endeavour shall be made by the Tribunal to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

(5) Where any appeal can not be disposed off within the period of one hundred and eighty days specified in sub-section (4) of this section, the Tribunal shall record its reasons in writing for not disposing of the appeal within the said period and endeavour to dispose of the appeal finally within a further period not exceeding ninety days.

(6) The Tribunal may authorise any person, as it deems fit, to represent the interest of the users or consumers, if any, in the proceedings before it.

(7) The Tribunal may, for the purpose of examining the legality, propriety or correctness of any order which is the subject matter of the appeal, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

(8) No information shall be disclosed in appeal proceedings and no public hearing shall take place if doing so would impair the protection of national security interests, cause disclosure of classified information, impede law enforcement, prejudice the legitimate commercial interests of the bidders, would impede fair competition or contravene any law.

(9) The order of the Tribunal shall be final unless it is modified or set aside in an appeal filed under section 138.

Procedure and powers of Tribunal

132. (1) All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

(2) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Tribunal shall have powers to regulate its own procedure.

(3) Subject to the provisions of sub-section (9) of section 130, the Tribunal shall have the powers to pass such interim order in any proceeding, hearing or matter before the Tribunal, as it may consider appropriate.

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing an appeal for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (i) any other matter which may be prescribed.

(5) An order made by the Tribunal under this Act shall be executable by the Tribunal as a decree of civil court and, for this purpose, the Tribunal shall have all the powers of a civil court.

(6) Notwithstanding anything contained in sub-section (5), the Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Decision to be by majority

133. If the members of a bench consisting of two members of the Tribunal differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the chairperson of the Tribunal who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

Proceedings of the Tribunal

134. (1) The Tribunal shall meet at the head office or any other place at such time as the chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.

(2) The chairperson, or if he is unable to attend the proceedings of the Tribunal, the senior-most Judicial Member shall preside at the meeting.

(3) All questions which come up before any meeting of the Tribunal shall be decided by a majority of votes of the members present and voting, and in the event of an equality of votes, the chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) Save as otherwise provided in sub-section (3), every member shall have one vote.

(5) All orders and decisions of the Tribunal shall be authenticated by an officer of the Tribunal duly authorised by the chairperson in this behalf.

Power of Tribunal to call for records

135. Notwithstanding anything contained in this Act or in any other law for the time being in force, the Tribunal may at any time, for securing compliance with the provisions of this Act, require any procuring entity;-

- (a) to produce records relating to or in connection with any bid process;
- (b) to furnish the bidding documents, estimates, statements, accounts or statistics relating to such bids; and
- (c) to furnish any report;

and the said procuring entity shall furnish the same as early as may be.

Assistance of legal practitioners and presenting officers

136. (1) A person preferring an appeal to the Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Tribunal, as the case may be.

(2) The Tribunal may, on an application of any appellant, authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Tribunal, as the case may be.

Delegation

137. The Tribunal may, by general or special order in writing, delegate to any member or officer of the Tribunal or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act, excluding the power to hear appeals or review orders, as it may deem necessary.

Appeal to Supreme Court

138. Any person aggrieved by any decision or order of the Tribunal may file an appeal to the Supreme Court within thirty days from the date of communication of the decision or order of the Tribunal to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

CHAPTER XIII

INVESTIGATION AND ENFORCEMENT

Investigation of certain matters

139. (1) On a representation made to the Authority by or on behalf of a person having an interest in the matter, or on its own motion, the Authority may, on being satisfied that a procuring entity has failed to comply with any of the provisions of this Act or rules made thereunder, at any time, by order in writing, direct any person (hereafter in this section referred to as Investigating Authority) specified in the order to investigate the affairs of any procuring entity and to report to the Authority on any investigation made by such Investigating Authority:

Provided that the Investigating Authority may, wherever necessary, employ any auditor or any other person for the purpose of assisting it in any investigation under this section.

(2) Notwithstanding anything to the contrary contained in section 84 of the Companies Act, 1956, the Investigating Authority may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made, by one or more of its officers, of any procuring entity and its books of account; and the Investigating Authority shall supply to the procuring entity a copy of its report on such inspection.

(3) It shall be the duty of every officer and employee of the procuring entity to produce before the Investigating Authority directed to make the investigation under subsection (1), or inspection under sub-section (2), all such books of account, registers and other documents in its custody or power and to furnish any statement and information relating to its affairs as the said Investigating Authority may require from it within such time as the Investigating Authority may specify.

(4) Any Investigating Authority, directed to make an investigation under subsection (1), or inspection under sub-section (2), may examine on oath any officer of the procuring entity in relation to his duties and may administer oaths accordingly.

(5) The Investigating Authority, shall, if it has been directed by the Authority to cause an inspection to be made, and may, in any other case, report to the Authority on any inspection made under this section.

(6) On receipt of any report under sub-section (1) or sub-section (5), the Authority may, after giving such opportunity to the procuring entity to make a representation in connection with the report as in the opinion of the Authority, seems reasonable, by order in writing :-

(a) require the procuring entity to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) direct the procuring entity to cease to carry on with the procurement specified in the order or to continue with it in such manner as it may specify.

(7) The Authority may, after giving reasonable notice to the procuring entity, publish the report submitted by the Investigating Authority under sub-section (5) or such portion thereof as may appear to it to be necessary.

Orders for securing compliance

140. (1) Where the Authority, on the basis of material in its possession, is satisfied that a procuring entity is contravening, or is likely to contravene, any of the provisions of this Act or the rules made thereunder, it shall, by an order, give such directions as may be necessary for the purpose of securing compliance with that provision.

(2) While giving direction under sub-section (1), the Authority shall have due regard to the extent to which any person is likely to sustain loss or damage due to such contravention.

Procedure for issuing directions by the Authority

141. The Authority, before issuing any direction under section 140, shall--

(a) serve notice to the concerned procuring entity;

- (b) publish the notice for the purpose of bringing the matters to the attention of persons likely to be affected, or affected;
- (c) consider suggestions and objections from the concerned procuring entity and the persons likely to be affected, or affected.

CHAPTER XIV

OFFENCES AND PENALTIES

Punishment for receiving or granting undue gain

142. (1) Whoever, dishonestly demands or agrees to receive or receives or offers, agrees to grant or grants, as the case may be, any undue gain in the form of employment, remuneration, gratuity, inducement or other benefit in the course of any bid process or procurement, knowing or having reason to believe the same to be an undue gain, shall be punishable with imprisonment of either description for a term which may extend to ten years or with fine which may extend to fifty lakh rupees, or with both.

(2) The provisions of sub-section (1) of this section shall also apply where any undue gain has been received or granted, as the case may be, within a period of two years commencing from the date on which the relevant procurement contract or framework agreement came into effect.

Interference with bid process

143. (1) Whoever, -

- (a) interferes with or influences any bid process with the intention of securing any undue gain or advantage for any entity or class of entities; or
- (b) interferes with any bid process with the intention of causing any undue disadvantage for and in respect of any vendor or class of vendors; or
- (c) engages in any action or lobbying, direct or indirect, with the objective of creating an undue restriction or limitation on fair competition;
- (d) maliciously influences any procuring entity or any official thereof or willfully or fraudulently makes any assertion or representation that would restrict or constrain fair competition in any procurement;
- (e) engages a former official of the procuring entity as an employee, director, consultant, adviser or otherwise, within a period of one year after such

former official was associated with a procurement in which the employer had an interest, if the contract value of such procurement exceeded five crore rupees;

- (f) engages in any form of bid-rigging, cartelisation, collusive bidding or anti-competitive behaviour; or
- (g) engages, retains or employs any person or agency to solicit or secure a procurement contract or framework agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, but excluding *bona fide* employees or established commercial or selling agencies maintained by a bidder for the purpose of securing business.

shall be punishable with imprisonment for a term which may extend to ten years, or with fine which may extend to fifty lakh rupees, or with both.

Wasting of bid process, vexatious litigation etc.

144. (1) Whoever negligently or intentionally causes any bid process to be wasted or unduly delayed without sufficient cause shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to twenty lakh rupees, or with both.

(2) Whoever intentionally files vexatious, frivolous or malicious complaints, review petitions or appeals, as the case may be, with the objective of delaying or defeating any procurement or causing harm or loss to any procuring entity or bidder shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to twenty lakh rupees, or with both.

Punishment for non-compliance of orders or directions

145. Whoever, fails to comply with any order or direction of the Tribunal or the Authority, as the case may be, without any reasonable ground or willfully contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules made thereunder, shall be punishable with imprisonment for a term which may extend to three years or with fine, which may extend to fifty lakh rupees, or with both in respect of each

offence and in the case of a continuing failure, with an additional fine which may extend to two lakh rupees for every day during which the failure continues after conviction of the first such offence.

Penalty for non-compliance of orders or directions

146. (1) If the Tribunal is satisfied that any person has contravened any of the provisions of this Act or rules made thereunder, or any direction issued by the Tribunal, it may, after giving such person an opportunity of being heard in the matter and upon proof of such conduct by preponderance of the evidence, by order in writing, direct that without prejudice to any other penalty or punishment to which he may be liable under this Act, such person shall pay, by way of penalty, an amount which may extend to fifty lakh rupees for each contravention and in case of a continuing failure, with an additional penalty which may extend to two lakh rupees for every day during which the failure continues after contravention of the first such direction and may also impose an additional penalty which may extend to an amount equal to twice the undue gain that such person received or granted or was likely to receive or grant as a result of any contravention contemplated in this section.

(2) If the Authority is satisfied that any person has contravened any provisions of this Act or rules made thereunder, or any direction issued by the Authority, it may, after giving such person an opportunity of being heard in the matter and upon proof of such conduct by preponderance of the evidence, by order in writing, direct that without prejudice to any other penalty or punishment to which he may be liable under this Act, such person shall pay, by way of penalty, an amount which may extend to fifty lakh rupees for each contravention and in case of a continuing failure, with an additional penalty which may extend to two lakh rupees for every day during which the failure continues after contravention of the first such direction and may also impose an additional penalty which may extend to an amount equal to twice the undue gain that such person received or granted or was likely to receive or grant as a result of any contravention contemplated in this section.

(3) Without prejudice to the generalities of sub-sections (1) and (2) of this section, any person who engages in causing any form of undue gain, as specified in

section 142, or interferes with any bid process or engages in any action, as specified in section 143, or causes any bid process to be wasted or delayed, as specified in sub-section (1) of section 144 or files vexatious, frivolous or malicious complaints, review petitions or appeals, as specified in sub-section (2) of section 144, shall be deemed to have contravened the provisions of this Act, and shall be liable to the penalties specified in sub-section (1) or sub-section (2), as the case may be, of this section.

Compensation in certain cases

147. (1) Where the Tribunal or Authority, as the case may be, is satisfied that a procuring entity has not acted in good faith or has failed to exercise the care and diligence reasonably expected from such procuring entity, it may, after giving such procuring entity an opportunity of being heard in the matter, by order direct that procuring entity to pay to the affected bidder, such compensation as it may determine, but not exceeding the higher of thrice the bid security specified for the bid process and the reasonable costs incurred by the bidder in preparation and submission of his bid.

(2) Where the Tribunal or Authority, as the case may be, is satisfied that any official of a procuring entity has not acted in good faith or failed to exercise the care and diligence reasonably expected from such official, it may, after giving such person an opportunity of being heard in the matter, by order direct that official to pay to the affected bidder, such compensation as it may determine, but not exceeding twenty lakh rupees.

Penalties not to affect other liabilities

148. The penalties imposed under this Act shall be in addition to, and not in derogation of, any liability in respect of payment of compensation, which the offender may have incurred.

Penalty for fraudulent claims

149. If a vendor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the vendor, he shall be liable to the procuring entity for an amount equal to twice such unsupported part

of the claim and the procuring entity may, after giving notice to the vendor, recover such amount from the vendor.

Offences by companies

150. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.

(3) *Explanation.* - For the purpose of this section,-

(a) "company" means a body corporate and includes a limited liability partnership, firm, registered society, trust or other association of individuals; and

(b) "director", in relation to a limited liability partnership or firm, means a partner in the firm; in relation to a society means a member of its governing body; and in relation to a trust means a trustee.

Abetment

151. (1) Whoever abets an offence punishable under this Act, shall, notwithstanding anything contained in the Indian Penal Code, be punished with the punishment provided for the offence.

(2) Without prejudice to any penalty or fine which may be imposed or prosecution proceeding which may be initiated under this Act or any other law for the time being in force, if any officer or other employee of a procuring entity enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any offence under this Act is committed, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Cognizance of offences

152. No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by the Government or the Authority or any procuring entity, or any officer authorised by them for this purpose.

Cancellation of procurement contract or framework agreement

153. Where any punishment or penalty has been awarded to any person under the aforesaid provisions of this chapter for his conduct in respect of a procurement contract or framework agreement, as the case may be, the procuring entity shall consider taking one or more of the following actions as it may deem appropriate:

- (a) if the procurement contract has not come into effect, cancellation of the contract;
- (b) if the procurement contract has come into effect, rescission of the contract or forfeiting the payment of a part of the contract value, but not exceeding 15 per cent of such contract value; or
- (c) suspension or debarment of the vendor from participating in any bid process undertaken by the procuring entity for a period that may extend to two years.

Debarment from bidding

154. (1) No person shall be eligible for engaging in the bid process of a particular procuring entity for a period of one year commencing from the date on which its entire bid security or the entire performance security or any substitute thereof, as the case may

be, has been forfeited by that procuring entity in respect of any bid process, procurement contract or framework agreement; provided that the period of debarment under this section shall be two years where the procurement contract or framework agreement has been terminated for breach of any law, rule or contract by such person.

(2) A person who has been debarred under the provisions of sub-section (1) of this section by any two or more procuring entities, during a period of one year, shall not be eligible for engaging in the bid process of any and all procuring entities for a period of two years commencing from the date on which he was debarred by the second or subsequent procuring entity, as the case may be.

(3) No person who has been convicted or penalised under the provisions of this chapter shall be eligible for engaging in the bid process of any procuring entity for a period of one year commencing from the date on which he was convicted or penalised, as the case may be.

(4) No company, society or trust, whose director trustee, employee or agent, as the case may be, has been convicted or penalised for any criminal offence committed in the course of his professional functions or the making of false statements or misrepresentations as to the qualifications of such company, society or trust to enter into a procurement contract shall be eligible for engaging in the bid process of any procuring entity for a period of one year commencing from the date on which such director, trustee, employee or agent was convicted or penalised, as the case may be.

(5) If a vendor debarred under this section is a company, its debarment shall extend to every entity which controls such company or has a shareholding of 26 per cent or more in such company, as the case may be, and thereupon the disability specified in this section shall apply to every such shareholder.

(6) If a vendor debarred under this section is a company, its debarment shall extend to every entity which is controlled by such company and to every other entity in which such company has a shareholding of 26 per cent or more, and thereupon the disability specified in this section shall apply to every such entity.

(7) Without prejudice to the provisions of sub-sections (1) to (3) of this section, the Government may prescribe the conditions and circumstances in which certain persons may be debarred from bidding and the period of such debarment in different circumstances.

CHAPTER XV

SPECIAL COURTS

Constitution of Special Courts

155. (1) The Government may, for the purposes of providing speedy trial of offences referred to in sections 142 to 151, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of, -

- (a) by a Judge, if any, exercising jurisdiction in the Special Court;
- (b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub-section(1).

Procedure and power of Special Court

156. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under sections 142 to 151 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 142 to 151 in respect of any offence that the case is

one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act:

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court:

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence referred to in sections 142 to 151 in a summary way in accordance with the procedure specified in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial:

Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is not desirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person

concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall , for the purposes of section 308 of the Code of Criminal Procedure,1973, be deemed to have been tendered under section 307 thereof.

(5) The Special Court may determine the civil liability against any person in terms of the provisions of this Act and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

Explanation- For the purposes of this section, ‘civil liability’ means loss or damage incurred by the concerned person due to the commission of an offence referred to in sections 142 to 151.

Special Court to have powers of Court of Session

157. Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.

Appeal and revision

158. The High Court may exercise, so far as may be applicable, all the powers conferred by chapters XXIX and XXX of the Code of Criminal Procedure, 1973, as if the Special Court within the local limits of the jurisdiction of the High Court is a District Court, or as the case may be, the Court of Session, trying cases within the local limits of jurisdiction of the High Court.

Review by Special Court

159. The Special Court may, on a petition or otherwise and in order to prevent miscarriage of justice, review its judgment or order passed under section 156, but no such review petition shall be entertained except on the ground that it was such order passed under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record:

Provided that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected.

Explanation:- For the purpose of this Part, "Special Courts" means the Special Courts constituted under sub-section (1) of section 155.

CHAPTER XVI
MISCELLANEOUS

Counsellor for competition in procurement

160. (1) Every procuring entity shall have a counsellor for competition in procurement to be referred to as the counsellor for competition.

(2) The head of each procuring entity shall –

(a) designate a suitable officer who is not more than two ranks below the head of the procuring entity to serve as the counsellor for competition in the procuring entity.

(b) not assign to such officer any duties or responsibilities that are inconsistent with his duties and responsibilities as the counsellor for competition; and

(c) provide staff and other assistance as may be necessary for carrying out the duties and responsibilities of the counsellor for competition, such as persons who are specialists in technical operations, contract administration, financial management and supply management.

(3) The counsellor for competition shall be responsible for promoting competition, challenging barriers to procurement, including such barriers as unnecessarily restrictive statements of need, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses, and promoting the procurement of goods and services that are available through the commercial retail network.

(4) The counsellor for competition shall –

(a) review the procurement activities of the procuring entity from the perspective of competition;

(b) identify and report to the head of the procuring entity –

(i) opportunities and actions taken to achieve full and open competition in the procurement activities of the procuring entity; and

- (ii) any condition or action which has the effect of unnecessarily restricting competition in the procurement activities of the procuring entity;
 - (c) recommend to the head of the procuring entity goals and the plans for increasing competition during the year; and
 - (d) recommend to the head of the procuring entity a system of personal and organisational accountability for competition, which may include the use of recognition and awards to motivate the officers to promote competition in procurement.
- (5) The counsellor for competition shall prepare and submit to the head of the procuring entity and to the Department of Procurement an annual report describing –
- (i) such counsellor’s activities under this section;
 - (ii) new initiatives required to increase competition;
 - (iii) barriers to full and open competition that remain; and
 - (iv) the programmes for procurement training and research.
- (6) The Department shall include a summary of the annual report of every counsellor for competition in its own Annual Report to be made under section 13.

E-Procurement

161. (1) The Government may, from time to time, prescribe the adoption of e-procurement for different stages and types of procurement, and to the extent thereof, the procedures specified in this Act shall be deemed to be modified for substituting written communication by e-communication in a manner that improves competition, efficiency and transparency without affecting the sanctity, security and recording of such communications and the information contained therein.

(2) The Government shall create one or more websites for posting all matters which are required to be brought to the attention of the public in accordance with the

provisions of this Act, and each department, public sector undertaking or authority shall post its procurement matters on its respective website for public information.

Adjustment of amounts for inflation

162. (1) Effective from April 1 of 2015, all amounts specified in this Act shall be revised to reflect the variation in Wholesale Price Index (hereinafter referred to as “WPI”) published by the Government, or any substitute thereof, in accordance with the provisions of this section.

(2) The WPI as on April 1, 2010 shall be taken as the base and upon variation thereof by every ten per cent compared to the base, the amounts specified in this Act shall be varied by a corresponding ten per cent thereof to reflect the variation in WPI. Such variation in amounts shall be effective from April 1, 2015 onwards and shall be carried out once in five years on April 1 of each year that is divisible by five. Provided, however, that the revised amount shall be rounded off to the nearest lakh rupees if the base amount to be revised is less than ten lakh rupees and shall be rounded off to ten lakh rupees in all other cases.

(3) The Department shall publish the revised amounts in pursuance of this section and the same shall take effect on the date of such publication.

Delegation in procurement matters

163 (1) Except as otherwise provided in this Act, powers conferred on the head of a procuring entity under this Act shall be exercised only by the head of the procuring entity.

(2) Save as provided in sub-section (1) of this section, any power conferred on a procuring entity under this Act may be delegated in such manner and to such extent as may be prescribed in the Procurement Rules.

Protection from reprisal for disclosure

164. (1) An employee of a bidder or vendor, as the case may be, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to the

procuring entity, the Department, the Authority, the Chief Vigilance Commissioner, the Central Bureau of Investigation or a Member of Parliament, information relating to a substantial violation of this Act, the rules made thereunder or the relevant procurement contract or framework agreement.

(2) A person who believes that he has been subjected to a reprisal prohibited by subsection (1) of this section may submit a complaint to the Authority. Unless the Authority determines that the complaint is frivolous, it shall cause the complaint to be investigated and upon completion of such investigation, provide a report of the findings of the investigation to such person, the bidder or vendor concerned, and the head of the procuring entity.

(3) If the head of a procuring entity determines that a bidder or vendor, as the case may be, has subjected a person to a reprisal prohibited by subsection (1) of this section, the head of the procuring entity may take one or more of the following actions:

- (a) Direct the bidder or vendor to take affirmative action to abate the reprisal.
- (b) Direct the bidder or vendor to reinstate the person to the position that the person held before the reprisal, together with the compensation including back pay, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- (c) Direct the bidder or vendor to pay the person an amount equal to the aggregate amount of all costs and expenses, including legal fees, that were reasonably incurred by such person for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the procuring entity.

(4) Whenever a bidder or vendor, fails to comply with an order issued under sub-section (3) of this section, the head of the procuring entity shall file an action for enforcement of such order in the Authority. In any action brought under this sub-section, the Authority may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(5) Any person adversely affected or aggrieved by an order issued under sub-section (3) may file an appeal before the Authority. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the procuring entity.

(6) Without prejudice to the provisions of sub-sections (3) and (4) of this section, the Authority may, upon completion of investigations under sub-section (2) of this section, and after hearing the affected parties, direct the bidder or vendor, as the case may be, to pay to the person who has been the subject of reprisal, a solatium payment that may extend to the total annual emoluments of such person.

(7) Nothing in this section may be construed to authorise the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (1) of this section or to modify or derogate from a right or remedy otherwise available to the employee

Power to require statistics and returns

165. (1) It shall be the duty of every procuring entity or any other person to whom a request is made by the Authority to furnish to the Authority such statistics, returns or other information relating to the relevant procurement as it may require and at such times and in such form and manner as may be specified by the Authority.

(2) The Government may from time to time prescribe the statistics, returns or other information that a procuring entity, bidder or other person shall submit to such authority and in such manner, form and periodic intervals as may be prescribed and any person who fails to comply shall be liable to penalties under the provisions of sub-section (2) of section 146.

Protection of action taken in good faith

166. No suit, prosecution or other proceeding shall lie against the Government or Tribunal or any officer or employee thereof, or any member of the Tribunal or any public servant for anything done or in good faith purporting to be done under this Act or the rules made thereunder.

Members and staff of Tribunal and Authority to be public servants

167. The chairperson, members, officers and other employees of the Tribunal and Authority shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 22 of the Indian Penal Code.

Service of notices, orders or documents

168. (1) Every notice, order or document by or under this Act required, or authorised to be addressed to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt therefore or by registered post or such means of delivery as may be prescribed -

- (a) where the Government is the addressee, at the office of such officer as the Government may prescribe in this behalf;
- (b) where the Authority is the addressee, at the office of the Authority;
- (c) where a procuring entity is the addressee, at the office of the procuring entity;
- (d) where a company is the addressee, at the registered office of the company or, in the event of the registered office of the company not being in India, at the head office of the company in India; and
- (e) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(2) Every notice, order or document by or under this Act required or authorised to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the owner or occupier of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

Recovery of sums payable

169. Any amount due from a person under this Act, if not paid, may be recovered from him as if it were an arrear of land revenue recoverable under the Revenue Recovery Act, 1890 or any other law for the time being in force in the respective state.

Civil court not to have jurisdiction

170. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the procuring entity, Authority or Tribunal are empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Power of Central Government to make rules

171. (1) The Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

- (a) exemption for certain procurement under sub-section (1) and (4) of section 5;
- (b) application of certain provisions of the Act to exempted procurement under sub-section (2) of section 5.
- (c) the form, manner and particulars in which review petition may be filed under sub-section (1) of section 6;
- (d) the Procurement Rules for application to procuring entities under clause (a) sub-section (1) of section 11;
- (e) the form, manner and time for preparing the budget of the Authority under sub-section (5) of section 23 and of the Tribunal under sub-section (5) of section 129;

- (f) the salary and allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Authority under sub-section (2) of section 18, and of the officers and other employees of the Authority under sub-section (3) of section 22;
- (g) the form, verification and fee in respect of an appeal to be filed before the Authority under sub-section (2) of section 24;
- (h) powers of the Authority, while trying a suit under sub-section (4) of section 28 and of the Tribunal, while trying a suit, under sub-section (4) of section 132;
- (i) exceptions to the requirement of providing bid security under clause (a) of sub-section (1) of section 48;
- (j) the period and manner of entry into force of any category of procurement contracts under clause (b) of sub-section (3) of section 54;
- (k) the classification and manner of publication of certain information on a website under sub-section (3) of section 55;
- (l) manner of publication of notice under sub-section (2) of section 49, sub-section (1) of section 81, and sub-section (5) of section 82 ;
- (m) procedure, conditions and manner of registration of qualified bidders under sub-section (1) of section 58;
- (n) elements and circumstances in respect of which the lump sum price of a turn-key procurement may be varied under sub-section (2) of section 61;
- (o) standard terms of procurement contracts under sub-section (1) and (2) of section 62;
- (p) form of procurement contract or any other bidding document under sub-section (3) of section 62;

- (q) code of conduct for officers or employees of the procuring entity under section 67;
- (r) conditions for use of restricted bidding under section 70;
- (s) value of the the procurement contract in case of request for quotations under section 71;
- (t) procedure, conditions and manner for use of request for proposals with consecutive negotiations under section 75;
- (u) value, procedure, conditions and manner of direct purchase from the retail network under sections 78 and 102;
- (v) conditions for use of single source procurement under clause (b) of sub-sections (2) and (3) of section 77;
- (w) margin of preference for domestic bidders under clause (b) of sub-section (3) of section 43;
- (x) conditions in which the requirement of a procurement contract can be dispensed with under sub-section (3) of section 88;
- (y) the duration of the framework agreement under clause (a) of sub-section (1) of section 109;
- (z) conditions for the bidding process for procurement of PPP projects under section 115;
- (aa) conditions for formulating, signing and implementing a concession agreement under sub-section (1) of section 116;
- (ab) the salary and allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Tribunal under sub-section (2) of section 124, and of the officers and other employees of the Tribunal under sub-section (3) of section 128;

- (ac) the form, verification and fee in respect of an appeal to be filed before the Tribunal under sub-section (2) of section 130;
- (ad) the conditions and circumstances in which certain persons may be debarred from bidding and the period of such debarment in different circumstances under sub-section (7) of section 154;
- (ae) adoption of e-procurement for different stages and types of procurement under sub-section (1) of section 161;
- (af) the authority, manner and extent to which the powers, functions and duties of a procuring entity may be delegated under sub-section (2) of section 163;
- (ag) the manner, form and periodic intervals for providing statistics under sub-section (2) of section 165;
- (ah) manner in which notice shall be delivered under sub-section (1) of section 168 ; and
- (ai) any other matter which is required to be or may be prescribed.

Rules to be laid before Parliament

172. Every rule made by the Government, shall be laid, as soon as may be after it is made, before each House of the Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Act not to apply to certain arbitration proceedings

173. The provisions of this Act shall not apply to any arbitration proceedings that are initiated after the entry into force of a procurement contract or framework agreement, as

the case may be, if such proceedings do not relate to or affect any rights or obligations arising out of the provisions of this Act.

Act to have overriding effect

174. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Transitional provisions

175. Notwithstanding anything to the contrary contained in this Act, the Government may, by notification, declare that any or all the provisions contained in this Act, shall not apply for such period, not exceeding one year from the appointed date, as may be stipulated in the notification.

Power to remove difficulties

176. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and saving

177. (1) Notwithstanding the repeal of the provisions of any other law or rules in accordance with the provisions of this Act, anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not

inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(2) Nothing contained in this Act or any rule made thereunder shall have effect insofar as it is inconsistent with any provisions of the Right to Information Act 2005.

(3) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.