

	<p>THE PUBLIC PROCUREMENT BILL, 2012</p> <p>A BILL</p> <p><i>to regulate public procurement with the objectives of ensuring transparency, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy and safeguarding integrity in the procurement process and for matters connected therewith or incidental thereto.</i></p> <p>WHEREAS the Central Government considers it necessary to ensure the highest standards of transparency, accountability and probity in the public procurement process and to enhance public confidence in public procurement.</p> <p>BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:-</p>	
	<p>CHAPTER I</p> <p>PRELIMINARY</p>	
Short title and commencement.	<p>1. (1) This Act may be called the Public Procurement Act, 2012.</p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:</p> <p>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.</p>	

<p>Definitions.</p>	<p>2. In this Act, unless the context otherwise requires, -</p> <p>(a) “bid” means a formal offer made in pursuance of an invitation by a procuring entity and includes any tender, proposal or quotation;</p> <p>(b) “bidder” means any person participating in a procurement process with a procuring entity;</p> <p>(c) “bidder registration documents” means the documents issued by a procuring entity, including any amendments thereto, that set out the terms and conditions of registration proceedings and includes the invitation to register;</p> <p>(d) “bidding documents” means documents issued by the procuring entity, including any amendments thereto, that set out the terms and conditions of the given procurement and includes the invitation to bid.</p> <p>(e) “bid security” means a security provided to the procuring entity by bidders for securing the fulfillment of any obligation in terms of the provisions of the bidding documents;</p> <p>(f) “Central Purchase Organization” means a procuring entity which makes procurement for one or more procuring entities or enters into rate contracts or framework agreements for procurement by other procuring entities;</p> <p>(g) “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</p>	
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	<p>lowered bids during a scheduled period of time and the automatic evaluation of bids;</p> <p>(h) "framework agreement" means an agreement or other arrangement between one or more procuring entities and one or more bidders who establishes the terms which may include the terms as to price and, where appropriate, quantity, under which the bidder may enter into one or more contracts with a procuring entity in the period during which agreement or the other arrangement applies;</p> <p>(i) "goods" includes all articles, material, commodities, livestock, furniture, fixtures, raw material, spares, instruments, commercial-off-the-shelf software, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock and any other category of goods purchased or otherwise acquired for the use of a procuring entity as well as services or works incidental to the supply of the goods if the value of services or works or both does not exceed that of the goods themselves;</p> <p>(j) "invitation to bid" means a document published by the procuring entity inviting bids relating to the subject matter of procurement and any amendment thereto and includes notice inviting tender and request for proposal;</p> <p>(k) "notification" means a notification published in the Official Gazette;</p> <p>(l) "offset" means any condition imposed on a foreign bidder in relation to a particular procurement so as to encourage local development by means of domestic</p>	
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	<p>content, licensing of technology, investment requirements, counter-trade or other similar requirements;</p> <p>(m) “prescribed” means prescribed by rules made under this Act;</p> <p>(n) “pre-qualification” means the procedure set out to identify, prior to inviting bids, the bidders that are qualified;</p> <p>(o) “pre-qualification documents” means the documents issued by a procuring entity, including any amendments thereto, that set out the terms and conditions of the pre-qualification proceedings and includes the invitation to pre-qualify;</p> <p>(p) “procurement” or “public procurement” means the acquisition by purchase, lease, licence or otherwise of works, goods or services, including award of Public Private Partnership projects, by a procuring entity whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition without consideration, and “procure” or “procured” shall be construed accordingly;</p> <p>(q) “procurement contract” means a contract entered into between the procuring entity and a successful bidder concerning the subject matter of procurement;</p> <p>(r) “procurement process” means the process of procurement extending from the issue of invitation to pre-qualify or to register or to bid till the award of the procurement contract;</p> <p>(s) “procuring entity” means an entity referred to in sub-section (2) of section 3;</p>	
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	<p>(t) “Public Private Partnership” means an arrangement between the Central Government, statutory entity or any other government owned entity on one side and a private sector entity on the other, for the provision of public assets or public services or both, through investments being made or management being undertaken by the private sector entity, for a specified period of time, where there is well defined allocation of risk between the private sector and the public entity and the private entity receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the public entity or its representative;</p> <p>(u) “rate contract” means an agreement between a Central Purchase Organisation or procuring entity and one or more bidders which specifies the terms and conditions including the price, for the supply of a subject matter of procurement required on a recurring basis;</p> <p>(v) “registered bidder” means any bidder who is on a list of registered bidders of the procuring entity or a Central Purchase Organisation maintained under section 20;</p> <p>(w) “services” means any subject matter of procurement other than goods or works and includes physical, maintenance, professional, intellectual, consultancy and advisory services or any service classified or declared as such by a procuring entity and does not include appointment of any person made by any procuring entity;</p>	
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	<p>(x) “subject matter of procurement” means any item of procurement whether in the form of goods, services or works;</p> <p>(y) “works” mean all works associated with the construction, reconstruction, site preparation, demolition, repair, maintenance, or renovation or railways, roads, highways or a building, an infrastructure, or structure or an installation or any construction work relating to excavation, drilling, installation of equipment and materials, as well as services incidental to the works if the value of those services does not exceed that of the works themselves;</p>	
<p>Application.</p>	<p>3. (1) This Act shall apply to all procuring entities referred to in sub-section (2).</p> <p>(2) For the purposes of this Act, “procuring entity” means –</p> <p>(a) any Ministry or Department of the Central Government or its attached or subordinate office;</p> <p>(b) any Central Public Sector Enterprise owned or controlled by the Central Government;</p> <p>(c) any company in which fifty per cent. or more of the paid-up share capital is held by the Central Government or any company in which one or more such companies hold fifty per cent. or more of the paid-up share capital;</p> <p>(d) any body established or constituted by the Constitution whose expenditure is met from the Consolidated Fund of India;</p> <p>(e) any body or board or corporation or authority or society or trust or</p>	

	<p>autonomous body (by whatever name called) established or constituted by an Act of Parliament or a body owned or controlled by the Central Government;</p> <p>(f) any other entity which the Central Government may, by notification, specify to be a procuring entity for the purpose of this Act, being an entity that receives substantial financial assistance from the Central Government in so far as the utilisation of such assistance towards procurement is concerned.</p> <p>(3) Subject to such rules as may be made in this behalf consistent with the provisions of sections 4 and 11, the provisions of Chapters II and III shall not apply to -</p> <p>(a) any procurement the estimated cost or value of which is less than five lakh rupees or such higher value as the Central Government may, by notification, specify;</p> <p>(b) emergency procurement necessary for the management of any disaster, as defined in clause (d) of section 2 of the Disaster Management Act, 2005;</p> <p>(c) procurement for the purposes of national security or on strategic considerations that the Central Government may, by order, specify.</p>	53 of 2005
	<p>CHAPTER II</p> <p>A.- GENERAL PRINCIPLES OF PROCUREMENT</p>	
Fundamental principles of public procurement.	<p>4. (1) In relation to a public procurement, the procuring entity shall have the responsibility and accountability to -</p> <p>(a) ensure efficiency, economy and transparency;</p>	

	<p>(b) provide fair and equitable treatment to bidders;</p> <p>(c) promote competition; and</p> <p>(d) put in place mechanisms to prevent corrupt practices.</p> <p>(2) Subject to the provision of sub-section (3) of section 3, every procuring entity shall carry out its procurement in accordance with the provisions of this Act and the rules and guidelines made thereunder.</p>	
<p>Determination of need for procurement.</p>	<p>5. (1) In every case of a procurement made under this Act the procuring entity shall first determine the need for the subject matter of procurement.</p> <p>(2) While assessing the need under sub-section (1), the procuring entity shall take into account the estimated cost of the procurement and also decide on the following matters, namely:-</p> <ul style="list-style-type: none"> (a) the scope or quantity of procurement, if determined; (b) the method of procurement to be followed with justification thereof; (c) need for pre-qualification, if any; (d) limitation on participation of bidders in terms of section 6, if any applicable, and justification thereof; (e) offsets as may be required under the rules; and (f) any other matter as may be prescribed. <p>(3) The procuring entity shall maintain documents relating to the determination of the need for procurement under sub-section (1) and the assessment made under sub-sections (2).</p> <p>(4) The procuring entity may publish</p>	

	<p>information regarding planned procurement activities for the forthcoming year or years on the Central Public Procurement Portal:</p> <p><i>Explanation.</i> – For the removal of doubts, it is hereby declared that the publication under this sub-section does not constitute initiation of a procurement process or cast any obligation on the procuring entity to issue a bidding document or confer any rights on prospective bidders.</p>	
<p>Participation of bidders.</p>	<p>6 (1) The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or among bidders or against any category thereof, except when authorised or required to do so by this Act or the rules or guidelines made thereunder or by the provisions of any other law for the time being in force.</p> <p>(2) The Central Government may, by notification in this behalf, provide for mandatory procurement of any subject matter of procurement from any category of bidders, and purchase preference in procurement from any category of bidders, on the following grounds, namely: -</p> <ul style="list-style-type: none"> (a) the promotion of domestic industry; (b) socio-economic policy of the Central Government; (c) any other consideration in public interest in furtherance of a duly notified Central Government policy: <p>Provided that any such notification shall contain a reasoned justification for such mandatory or preferential procurement, the category of suppliers chosen and the nature of preference provided.</p> <p>(3) The procuring entity, when inviting the participation of bidders in the procurement process shall declare whether participation of bidders is limited pursuant to this section and</p>	

	<p>on what ground and any such declaration may not ordinarily be later altered.</p> <p>(4) Nothing in this section shall be construed as preventing the Central Government or any procuring entity from imposing or enforcing measures limiting participation on account of the need -</p> <ul style="list-style-type: none"> (a) to protect public order, morality or safety; (b) to protect human, animal or plant life or their health; (c) to protect intellectual property; (d) to protect the essential security and strategic interest of India. 	
<p>Qualifications of bidders.</p>	<p>7. (1) A procuring entity may determine and apply one or more of the requirements specified in sub section (2) for a bidder to be qualified for participating in a procurement process.</p> <p>(2) Any bidder participating in the procurement process shall –</p> <ul style="list-style-type: none"> (a) possess the necessary professional, technical, financial and managerial resources and competence required by the bidding documents, pre-qualification documents or bidder registration documents, as the case may be, issued by the procuring entity; (b) have filed the required tax returns to the Central Government as may be specified in the bidding documents, pre-qualification documents or bidder registration documents; (c) not be insolvent, in receivership, bankrupt or being wound up, not have its affairs administered by a court or a judicial officer, not have its business activities suspended and must not be the subject of legal proceedings for 	

	<p>any of the foregoing reasons;</p> <p>(d) not have and their directors and officers not have been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a procurement contract within a period of two years preceding the commencement of the procurement process, or not have been otherwise disqualified pursuant to debarment proceedings;</p> <p>(e) not have a conflict of interest as may be prescribed and specified in the pre-qualification documents, bidder registration documents or bidding documents, which materially affects fair competition;</p> <p>(f) fulfil any other qualifications as may be prescribed.</p> <p>(2) Subject to the right of bidders to protect their intellectual property or trade secrets the procuring entity may require a bidder to provide any such information or declaration as it considers necessary to make an evaluation in accordance with subsection (1).</p> <p>(3) Any requirement established pursuant to this section shall be set out in the pre-qualification documents or bidder registration documents, if any, and in the bidding documents and shall apply equally to all bidders.</p> <p>(4) The procuring entity shall evaluate the qualifications of bidders only in accordance with the requirement specified in this section.</p>	
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<p>Obligations related to value of procurement.</p>	<p>8. (1) Every procuring entity shall obtain the approval of the authority which has the necessary financial powers to approve such procurement, before declaring a bid as successful.</p> <p>(2) A procuring entity shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid its obligations under sub-section (1) or to limit competition among bidders or otherwise avoid its obligations under this Act.</p> <p>Provided that in the interest of efficiency, economy and timely completion or supply, a procuring entity may, for reasons to be recorded in writing, divide its procurement into appropriate packages.</p>	
<p>Time Frame for processing.</p>	<p>9. (1) Subject to the rules as may be made by the Central Government in this behalf, every procuring entity shall pre-determine a reasonable time frame for completion of various stages of the process of procurement and indicate the same in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be.</p> <p>(2) The procuring entity shall endeavour to adhere to the time frame indicated under sub-section (1) and in case of failure to do so extend such time frame for reasons to be recorded in writing.</p>	
<p>Documentary record of procurement proceedings and of communications.</p>	<p>10. (1) The procuring entity shall maintain a record of its procurement proceedings, which shall include the following, namely:-</p> <p>(a) documents pertaining to determination of need for procurement under section 5;</p> <p>(b) description of the subject matter of the procurement under section 12;</p> <p>(c) statement of the reason for choice of</p>	

	<p>a procurement method other than open competitive bidding under sub-section (4) of section 30;</p> <p>(d) particulars of the participating bidders;</p> <p>(e) requests for clarifications and any responses thereto including during pre-bid conferences;</p> <p>(f) bid prices and other financial terms;</p> <p>(g) summary of the evaluation of bids;</p> <p>(h) details of any grievance redressal proceedings, and the related decisions;</p> <p>(i) any other information or record as may be prescribed.</p> <p>(2) Any document, notification, decision or other information generated in the course of a procurement and communicated as required by this Act, including in connection with grievance redressal proceedings or in the course of a meeting, or forming part of the record of the procurement process, shall be in a form that provides a record of the content of the information and is accessible so as to be usable for subsequent reference.</p> <p>(3) Subject to the provisions of the Right to Information Act, 2005 or of any other law for the time being in force relating to retention of records, the procuring entity shall retain the documentary record indicated in sub-sections (1) and (2), for a reasonable period after the expiry of the procurement contract, so as to enable audit or such other review.</p>	
<p>Code of Integrity for procuring entity and bidders.</p>	<p>11. (1) No official of a procuring entity or a person participating in a procurement process shall act in contravention of the code of integrity prescribed by the Central Government.</p>	

	<p>(2) The code of integrity referred to sub-section (1) shall include provisions for -</p> <p>(a) prohibiting -</p> <ul style="list-style-type: none">(i) any offer, solicitation or acceptance of any bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process;(ii) any omission, including a misrepresentation that misleads or attempts to mislead so as to obtain a financial or other benefit or avoid an obligation;(iii) any collusion, bid rigging or anti-competitive behaviour to impair the transparency, fairness and progress of the procurement process;(iv) improper use of information shared between the procuring entity and the bidders with an intent to gain unfair advantage in the procurement process or for personal gain;(v) any financial or business transactions between the bidder and any official of the procuring entity;(vi) any coercion including impairing or harming or threatening to do the same, directly or indirectly, to any party or to its property to influence the procurement process;(vii) any obstruction of any investigation or audit of a procurement process; <p>(b) disclosure of conflict of interest;</p>	
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	<p>(c) disclosure by the bidder of any previous transgressions with any entity in any country during the last three years or of any debarment by any other procuring entity.</p> <p>(3) Without prejudice to the provisions of Chapter IV, in case of any breach of the code of integrity by a bidder or prospective bidder, as the case may be, the procuring entity may take appropriate measures including-</p> <ul style="list-style-type: none"> (a) exclusion of the bidder from the procurement process; (b) calling off of pre-contract negotiations and forfeiture or encashment of bid security; (c) forfeiture or encashment of any other security or bond relating to the procurement; (d) recovery of payments made by the procuring entity along with interest thereon at bank rate; (e) cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity; (f) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding two years under section 46. 	
<p>Description of the subject matter of procurement.</p>	<p>12. (1) The description of the subject matter of procurement shall be set out in the pre-qualification documents, bidder registration documents and the bidding documents and shall –</p> <ul style="list-style-type: none"> (a) be such as to meet the essential needs of the procuring entity; (b) to the extent practicable- <ul style="list-style-type: none"> (i) be objective, functional, generic and measurable; 	

	<ul style="list-style-type: none"> (ii) set out the relevant technical, quality and performance characteristics; (iii) not indicate a requirement for a particular trade mark, trade name or brand <p>(c) be drawn up in accordance with guidelines as may be prescribed</p> <p>(2) Where applicable, the technical specifications shall, to the extent practicable, be based on national technical regulations or recognised national standards or building codes, wherever such standards exist or in their absence, relevant International standards may be used.</p>	
Single part and two part bids.	<p>13. (1) Subject to the provisions of this Act and the rules and guidelines made thereunder, a procuring entity may choose to-</p> <ul style="list-style-type: none"> (a) call for bids in which the technical, quality and performance aspects, commercial terms and conditions and the financial aspects including the price are contained in a single envelope; or (b) if it is of the opinion that it is essential to evaluate the technical aspects of a bid before considering its financial aspect, call for bids in two envelopes, namely:- <ul style="list-style-type: none"> (i) the techno-commercial bid containing the technical, quality and performance aspects, commercial terms and conditions; and (ii) the financial bid containing financial aspects including the price. <p>(2) In case the procuring entity calls for bids in terms of clause (b) of sub-section (1), the techno-commercial bid shall be</p>	

	<p>opened and evaluated first and the financial bid of only those bids which have been found technically acceptable, shall be opened and evaluated.</p>	
<p>Criteria for evaluation.</p>	<p>14. (1) Save as otherwise provided in this Act or the rules or guidelines made thereunder or in any other law for the time being in force, the evaluation criteria shall relate to the subject matter of procurement and may include-</p> <ul style="list-style-type: none"> (a) the price; (b) the cost of operating, maintaining and repairing goods or works, the time for delivery of goods, completion of works or provision of services, the characteristics of the subject matter of procurement, such as the functional characteristics of goods or works and the environmental characteristics of the subject matter, the terms of payment and of guarantees in respect of the subject matter of procurement; and (c) where relevant, the experience, reliability and professional and technical competence of the bidder and of the personnel to be involved in providing the subject matter of procurement. <p>(2) Where considered necessary, the procuring entity may also specify trials, sample testing and other additional methods of technical evaluation of a bid:</p> <p>Provided that the requirement of such trials, sample testing or additional methods of evaluation shall be indicated in the bidding documents and a record of such trials and testing shall be maintained</p>	

	<p>in such manner as may be prescribed.</p> <p>(3) To the extent practicable, all non-price evaluation criteria shall be objective and quantifiable.</p> <p>(4) The criteria for evaluation of bids, including whether the requirements laid down in sub-section (2) of section 6 are applicable, shall be contained in the bidding documents;</p> <p>(5) Where applicable, the relative weights to be attached to each criterion shall be specified in the bidding documents;</p> <p>(6) No criteria or procedure, other than those mentioned in the bidding documents shall be used by the procuring entity in evaluating bids.</p>	
Price negotiations.	15. Save as otherwise provided in section 32 or in such circumstances and subject to such conditions as may be prescribed, no price negotiation shall be held by a procuring entity with a bidder with respect to a bid presented by him.	
Terms and conditions of contracts.	16. (1) The terms and conditions of the procurement contracts entered into shall be in accordance with the provisions of this Act, the applicable rules and the conditions indicated in the bidding documents. (2) The Central Government may prescribe standard terms and conditions of contract which shall be incorporated in the procurement contracts entered into by procuring entities as applicable.	
Offsets.	17. The Central Government may, by notification, specify its offset policy imposing any requirement for offsets and it shall be the duty of every procuring entity to implement such offset policy.	
Central Public Procurement Portal and electronic	18. (1) The Central Government shall set up and maintain a Central Public Procurement Portal accessible to the public for posting	

<p>procurement.</p>	<p>matters relating to public procurement.</p> <p>(2) Each procuring entity shall cause the procurement related information to be published as required under this Act or the rules and guidelines made thereunder on the Portal referred to in sub-section (1).</p> <p>(3) Without prejudice to the generality of sub-section (2), the Central Public Procurement Portal shall provide access to the following information in relation to procurement governed by the provisions of this Act, namely:-</p> <ol style="list-style-type: none"> (a) pre-qualification documents, bidder registration documents, bidding documents and any amendments, clarifications including those pursuant to pre-bid conference, and corrigenda thereto; (b) list of bidders that presented bids including during pre-qualification or bidder registration, as the case may be; (c) list of pre-qualified and registered bidders, as the case may be; (d) list of bidders excluded under section 26, with reasons; (e) decisions taken during the process of grievance redressal under Chapter III; (f) details of successful bids, their prices and bidders; (g) particulars of bidders who have been debarred by the Central Government or a procuring entity together with the name of the procuring entity, cause for the debarment action and the period of debarment; (h) any other information as may be prescribed. 	
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<p>Pre-qualification of bidders.</p>	<p>19. (1) A procuring entity may engage in a pre-qualification process in respect of a particular procurement, with a view to identifying, prior to inviting bids, the bidders that are qualified for any specified period of time.</p> <p>(2) For the purpose of sub section (1), a procuring entity may invite offers from prospective bidders by giving wide publicity to the invitation to pre-qualify and shall publish the particulars of the bidders that are qualified on the Central Public Procurement Portal.</p> <p>(4) Where a procuring entity has undertaken a pre-qualification process in respect of any procurement, only such pre-qualified bidders shall be entitled to continue in the procurement proceedings.</p> <p>(5) The procuring entity shall decide who is pre-qualified in accordance with section 7 and the criteria set out in the pre-qualification documents.</p> <p>(6) Every pre-qualification process shall be carried out in such manner and in accordance with such procedure as may be prescribed.</p>	
<p>Registration of bidders.</p>	<p>20. (1) With a view to establishing reliable sources for a subject matter of procurement or a class of procurement, which may be commonly required across procuring entities or repeatedly required by a procuring entity, a procuring entity may maintain a panel of registered bidders.</p> <p>(2) For the purpose of sub section (1), a procuring entity may invite offers from prospective bidders by giving wide publicity to the invitation to register and such registration shall be done in accordance with section 7, this section and the criteria set out in the bidder registration documents.</p> <p>(3) The procuring entities shall update the list of registered bidders by allowing</p>	

	<p>potential bidders to apply for registration on a continuous basis or by inviting offers for registration at least once a year.</p> <p>(4) The Central Government may prescribe the procedure and conditions for registration of bidders and the period for which such registration shall be valid.</p> <p>(5) Where a procuring entity does not register bidders in respect of a subject matter of procurement, it may use the list of registered bidders of a Central Purchase Organisation, or any other procuring entity, if any.</p> <p>(6) The results of the registration process shall be intimated to the bidders and the list of registered bidders for the subject matter of procurement shall be published in the Central Public Procurement Portal.</p>	
<p>Contents of bidding documents.</p>	<p>21. (1) Subject to the rules as may be made in this behalf, the invitation to bid shall contain-</p> <ul style="list-style-type: none"> (a) a brief description of subject matter of procurement; (b) in case of procurement of – <ul style="list-style-type: none"> (i) goods, its specifications including the nature, quantity and place of delivery; (ii) works, the nature and location of the works; (iii) services, the nature of the services and the location where they are to be provided; (c) any notice of limitation to participation of bidders in terms of section 6; (d) the manner, date and time for presentation of bids; (e) any other information which is considered by the procuring entity relevant for the purpose. <p>(2)The detailed bidding document shall</p>	

	<p>contain the particulars included in the invitation to bid, the criteria for evaluation of bids, the terms of the procurement contract, and such further information as may be prescribed, which may be necessary for the bidders to submit their bids;</p> <p>(3)The Central Government may prescribe standard conditions to be included in bidding documents including its form.</p>	
<p>Time frame for submission of bids.</p>	<p>22. (1) While fixing the last date by which bids are to be submitted by the bidders, the procuring entity shall take into account-</p> <p>(a) the need of the bidders for having a reasonable time to prepare and submit their bids; and</p> <p>(b) the time frame envisaged for procurement.</p> <p>(2) Subject to the provisions of section 24, the maximum time as may be allowed for submission of bids shall be the same for all bidders.</p>	
<p>Pre-bid clarifications.</p>	<p>23. (1) Any bidder may, in writing, seek clarifications from the procuring entity in respect of the bidding documents.</p> <p>(2) The period within which the bidders may seek clarifications under sub-section (1) and the period within which the procuring entity shall respond to such requests for clarifications shall be specified in the bidding documents;</p> <p>(3) All requests for clarification and responses thereto shall be intimated to all bidders and where applicable, shall be published on the Central Public Procurement Portal.</p> <p>(4) A procuring entity may hold a pre-bid conference to clarify doubts of potential bidders in respect of a particular procurement and the records of such</p>	

	conference shall be intimated to all bidders and where applicable, shall be published on the Central Public Procurement Portal.	
Changes to bidding documents.	<p>24. (1) In case any modification is made to the bidding documents or any clarification is issued which materially affects the terms contained in the bidding documents, the procuring entity shall publish such modification or clarification in the same manner as the publication of the initial bidding documents;</p> <p>(2) In case a clarification or modification is issued to the bidding documents, the procuring entity may, prior to the last date for submission of bids, extend such time limit in order to allow the bidders sufficient time to take into account the clarification or modification, as the case may be, while submitting their bids.</p> <p>(3) Any bidder who has submitted his bid in response to the original invitation shall have the opportunity to modify or re-submit it, as the case may be, within the period of time originally allotted or such extended time as may be allowed for submission of bids, when changes are made to the bidding documents by the procuring entity:</p> <p>Provided that the bid last submitted or the bid as modified by the bidder shall be considered for evaluation.</p>	
The procedure relating to submission and opening of bids.	<p>25. Subject to the terms and conditions as may be laid down in the bidding documents, submission of bids, opening and evaluation of bids, including constitution of committees for those purposes shall be in accordance with the rules as may be prescribed.</p>	

<p>Exclusion of bids.</p>	<p>26. (1) A procuring entity shall exclude a bid if -</p> <ul style="list-style-type: none"> (a) the bidder is not qualified in terms of section 7; (b) the bid materially departs from the requirements specified in the bidding documents or it contains false information; (c) the bidder submitting the bid, his agent or anyone acting on his behalf, gave or agreed to give, to any official of the procuring entity or other governmental authority a gratification in any form, or any other thing of value, so as to unduly influence the procurement process. (d) a bidder, in the opinion of the procuring entity, has a conflict of interest materially affecting fair competition. <p>(2) A bid shall be excluded as soon as the cause for its exclusion is discovered.</p> <p>(3) Every decision of a procuring entity to exclude a bid shall be for reasons to be recorded in writing.</p> <p>(4) Every decision of the procuring entity under sub-section (3) shall be –</p> <ul style="list-style-type: none"> (a) communicated to the concerned bidder in writing; (b) published on the Central Public Procurement Portal. 	
<p>Cancellation of the procurement process.</p>	<p>27. (1) A procuring entity may, for reasons to be recorded in writing, cancel the process of procurement initiated by him –</p> <ul style="list-style-type: none"> (a) at any time prior to the acceptance of the successful bid; or (b) after the successful bid is accepted in accordance with sub-sections (4) and (5). <p>(2) The procuring entity shall not open any bids or proposals after taking a decision to cancel the procurement and</p>	

	<p>shall return such unopened bids or proposals.</p> <p>(3) The decision of the procuring entity to cancel the procurement and reasons for such decision shall be immediately communicated to all bidders that participated in the procurement process.</p> <p>(4) If the bidder whose bid has been accepted as successful fails to sign any written procurement contract as required, or fails to provide any required security for the performance of the contract, the procuring entity may cancel the procurement process.</p> <p>(5) If a bidder is convicted of any offence under this Act, the procuring entity may-</p> <ul style="list-style-type: none"> (a)cancel the relevant procurement process if the bid of the convicted bidder has been declared as successful but no procurement contract has been entered into; (b)rescind the relevant contract or forfeit the payment of all or a part of the contract value if the procurement contract has been entered into between the procuring entity and the convicted bidder. 	
<p>Award contract.</p>	<p>of</p> <p>28. (1) Subject to the provisions of section 26 and sub-section (2) of section 6, the procuring entity shall consider a bid as successful –</p> <ul style="list-style-type: none"> (a) where price is the only award criterion, the bid with the lowest bid price; (b) where there are price and other award criteria, the most advantageous bid ascertained on the basis of the criteria and procedures for evaluating bids as specified in the bidding documents; (c) where there are no financial criteria, 	

	<p>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.</p> <p>(2) A bid shall be treated as successful in terms of sub-section (1), only after the competent authority has approved the procurement in terms of that bid.</p> <p>(3) As soon as the procuring entity, with the approval of the competent authority, decides to accept a bid, he shall communicate that fact to all participating bidders and also publish the decision on the Central Public Procurement Portal;</p> <p>(4) While communicating acceptance of his bid, the procuring entity shall advise the successful bidder to complete the requirements within a specified time, including signing of any agreement or furnishing any security, if necessary, to conclude the procurement contract.</p>	
	<u>B.- METHODS OF PROCUREMENT</u>	
<p>Methods of procurement.</p>	<p>29. (1) Subject to the provisions of this Act and the rules made thereunder, a procuring entity may procure a subject matter of procurement by means of any of the following methods, namely :-</p> <ul style="list-style-type: none"> (a) Open Competitive Bidding; or (b) Restricted Bidding; or (c) Two-stage Bidding; or (d) Single Source Procurement; or (e) Electronic Reverse Auctions; or (f) Request for Quotations; or (g) Spot Purchase; or (h) any other method of procurement notified by the Central Government satisfying the principles of procurement contained in this Act and which that Government considers 	

	<p>necessary in public interest.</p> <p>(2) Subject to the conditions and procedures mentioned in section 36, the procuring entity may enter into a framework agreement.</p> <p>(3) Notwithstanding anything contained in sub-sections (1) and (2), the procuring entity may, subject to the rules as may be made in this behalf, procure any subject matter of procurement by means of a rate contract concluded by a Central Purchase Organisation or by the procuring entity.</p> <p>(4) The Central Government may, by notification, declare adoption of electronic procurement as compulsory for different stages and types of procurement, and on such declaration, every requirement for written communication under this Act shall be deemed to have been satisfied if it were done by electronic means.</p> <p>(5) In procuring a subject matter of procurement, every procuring entity shall follow the detailed procedure in respect of the relevant method of procurement as may be prescribed.</p>	
<p>Open competitive bidding.</p>	<p>30. (1) Every procuring entity shall prefer the Open Competitive Bidding as the most preferred method of procurement to be followed.</p> <p>(2) Open competitive bidding may also be followed in case of two stage bidding in terms of section 33 and electronic reverse auction in terms of section 34.</p> <p>(3) The procuring entity may follow the pre-qualification procedure specified in section 19 and invite bids from pre-qualified bidders only.</p> <p>(4) Where the procuring entity chooses a method of procurement other than the open competitive bidding, it shall record the reasons and circumstances thereof.</p> <p>(5) In case of an open competitive</p>	

	<p>bidding, the procuring entity shall invite bids by publishing an invitation to bid-</p> <ul style="list-style-type: none"> (a) in at least one daily national newspaper; (b) on the Central Public Procurement Portal; and (c) on its own official website. <p>(6) In case the procurement is likely to involve bidders from outside India, the procuring entity may give adequate publicity to the invitation to bid, in addition to the publication referred to in sub-section (3).</p>	
<p>Restricted bidding.</p>	<p>31. (1) A procuring entity may choose to procure the subject matter of procurement by the method of restricted bidding if -</p> <ul style="list-style-type: none"> (a) the subject matter of procurement can be supplied only by a limited number of bidders; or (b) the time and cost involved to examine and evaluate a large number of bids may not be commensurate with the value of the subject matter of procurement; or (c) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding; or (d) procurement from a category of prospective bidders is necessary in terms of sub-section (2) of section 6. <p>(2) Subject to the rules as may be made in this behalf, the procedure for restricted bidding shall include the following, namely:-</p> <ul style="list-style-type: none"> (a) the procuring entity shall issue an invitation to bid by writing directly, 	

	<p>and on the same day, to-</p> <ul style="list-style-type: none"> (i) all the bidders who can supply the subject matter of procurement in terms of clause (a) of sub-section (1); (ii) all the bidders who are registered with the procuring entity or with a Central Purchase Organisation or with any other procuring entity for the subject matter of procurement; or (iii) an adequate number of bidders who can supply the subject matter of procurement selected in a non-discriminatory manner to ensure effective competition, in case of clause (b) of sub-section (1). <p>(b) a procuring entity may allow all prospective bidders who fulfill the qualification criteria laid down for the procurement, whether an invitation to bid has been issued to such a bidder or not, to participate in the bidding process.</p>	
<p>Single source procurement.</p>	<p>32. (1) A procuring entity may choose to procure the subject matter of procurement by the method of single source procurement if-</p> <ul style="list-style-type: none"> (a) the subject matter of procurement is available only from a particular prospective bidder, or a particular prospective bidder has exclusive rights in respect of the subject matter of procurement, such that no reasonable alternative or substitute source exists, and the use of any other procurement method would therefore not be possible; or (b) owing to a sudden unforeseen event, there is an extremely urgent need for 	

	<p>the subject matter of procurement, and engaging in any other method of procurement would be impractical; or</p> <p>(c) the procuring entity, having procured goods, equipment, technology or services from a supplier, determines that additional supplies or services must be procured from that supplier for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services; or</p> <p>(d) there is an existing contract for the subject matter of procurement which can be extended for additional goods, works or services and that the procuring entity is satisfied that no advantage would be obtained by further competition, the prices are reasonable and provisions for such extension exist in the original contract;</p> <p>(e) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of national security interests; or</p> <p>(f) procurement from a particular prospective bidder is necessary in terms of sub-section (2) of section 6;</p> <p>(g) in the case of procuring entities mentioned in clause (b) or clause (c) of sub-section (2) of section 3, a contract with a customer requires procurement from a particular source.</p> <p>(2) Subject to the rules as may be made in this behalf, the procedure for single source procurement shall include the following, namely:-</p> <p>(a) the procuring entity shall solicit a bid from a single prospective bidder.</p>	
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	(b) the procuring entity may engage in negotiations in good faith with the bidder.	
Two-stage bidding.	<p>33. (1) A procuring entity may choose to procure the subject matter of procurement by the method of two-stage bidding if-</p> <ul style="list-style-type: none"> (a) it is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or (b) the character of the subject matter of procurement is subject to such rapid technological advances and market fluctuations to make open competitive bidding unfeasible; or (c) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or (d) the bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement; <p>(2) Subject to the rules as may be made in this behalf, the procedure for two stage bidding shall include the following, namely:-</p> <ul style="list-style-type: none"> (a) in the first stage of the bidding process, the procuring entity shall invite bids containing the technical aspects and contractual terms and conditions of the proposed 	

	<p>procurement without a bid price;</p> <p>(b) all first stage bids, which are otherwise eligible, shall be evaluated in accordance with the procedure laid down in the rules through an appropriate committee constituted by the procuring entity;</p> <p>(c) the committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions;</p> <p>(d) in revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or delete any specification of the subject matter of procurement or criterion for evaluation;</p> <p>(e) Notwithstanding anything contained in sections 30 and 31, in the second stage of the bidding process, the procuring entity shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices in response to a revised set of terms and conditions of the procurement;</p> <p>(f) any bidder, invited to bid but not in a position to supply the subject matter of procurement due to changes in the specifications, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalised in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.</p>	
Electronic reverse auction.	34. (1) A procuring entity may choose to procure a subject matter of procurement by the	

	<p>method of electronic reverse auction, if-</p> <ul style="list-style-type: none"> (a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement; and (b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, such that effective competition is ensured; and (c) the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms. <p>(2) Subject to the rules as may be made in this behalf, the procedure for electronic reverse auction shall include the following, namely:-</p> <ul style="list-style-type: none"> (a) the procuring entity shall solicit bids by causing an invitation to the electronic reverse auction to be published in accordance with sub-section (5) of section 30 or sub-section (2) of section 31, as the case may be. (b) the invitation shall, in addition to the information as set out in section 21, include details relating to – <ul style="list-style-type: none"> (i) access to and registration for the auction; (ii) opening and closing of auction; (iii) norms for conduct of the auction; (iv) any other information as may be relevant to the method of procurement. <p>(3) Electronic reverse auction may also be used for obtaining the best financial bid in two stage bidding under section 33 and where the two part bid system is followed in terms of section 13.</p>	
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<p>Request for quotations and spot purchase.</p>	<p>35. (1) A procuring entity may choose to procure a subject matter of procurement of value below a monetary value as may be prescribed, by the method of request for quotations in the following situations, namely:-</p> <ul style="list-style-type: none"> (a) procurement of readily available commercial-off-the-shelf goods that are not specially produced to the particular description of the procuring entity and for which there is an established market; or (b) physical services that are not specially provided to the particular description of the procuring entity and are readily available in the market; or (c) procurement of any goods or works or services which are urgently required for maintenance or emergency repairs; <p>(2) Subject to the rules as may be made in this behalf, the procedure for request for quotations shall include the following, namely:-</p> <ul style="list-style-type: none"> (a) quotations shall be requested from as many potential bidders as practicable, subject to a minimum of three; (b) each bidder shall be permitted to give only one quotation. (c) the successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the request for quotations. <p>(3) A procuring entity may do a spot purchase of the subject matter of</p>	

	<p>procurement specified in sub-section (1) through a purchase committee comprising three members within the procuring entity and in such cases the purchase committee shall record a certificate to the effect that it is satisfied that the goods or services are of requisite quality and are priced at the prevailing market rate.</p> <p>(4) Nothing contained in sections 5 to 10 (both inclusive), sections 12 to 28 (both inclusive) and Chapter III shall apply to purchases made under this section.</p>	
<p>Framework agreements.</p>	<p>36. (1) A procuring entity may choose to engage in a framework agreement procedure in accordance with the rules as may be made in that behalf, where it determines that-</p> <ul style="list-style-type: none"> (a) the need for the subject matter of procurement is expected to arise on an indefinite or repeated basis during a given period of time; (b) by virtue of the nature of the subject matter of procurement, the need for it may arise during a given period of time. <p>(2) A procuring entity may award a framework agreement on the basis of open competitive bidding or by means of other procurement methods in accordance with the provisions of this Act.</p> <p>(3) Subject to the rules as may be made in this behalf, the procedure for framework agreement shall include the following, namely:-</p> <ul style="list-style-type: none"> (a) The manner in which framework agreements are to be established including selection of the method of bidding to be followed; and (b) The manner in which a procurement contract has to be 	

	entered into using a framework agreement	
Additional conditions for use of methods of procurement.	37. Notwithstanding anything contained in sections 31 to 36 (both inclusive), the Central Government may through notification, add the conditions for the use of any of the methods of procurement mentioned in clauses (b) to (g) of sub-section (1) of section 29, in a manner that is consistent with the principles of transparency and accountability.	
	CHAPTER III GRIEVANCE REDRESSAL	
Review by procuring entity.	<p>38. (1) Subject to section 40, any bidder or prospective bidder aggrieved that any decision, action or omission of the procuring entity is in contravention to the provisions of this Act or the rules or guidelines issued thereunder, may, within a period of ten days or such other period as may be specified in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, from the date of such decision or action, make an application for review of such decision or action, as the case may be, to the procuring entity clearly giving the specific ground or grounds on which he feels aggrieved:</p> <p>Provided that after the declaration of a bidder as successful in terms of section 28, the application for review may be filed only by a bidder who has participated in procurement proceedings.</p> <p>Provided further that in case a procuring entity evaluates the technical bid before the opening of the financial bid, an application for review related to the financial bid may be filed only by a bidder whose technical bid is found to be acceptable.</p> <p>(2) The official to whom the application for review has to be addressed, shall be indicated in</p>	

	<p>the pre-qualification documents, bidder registration documents or bidding documents, as the case may be.</p> <p>(3) Upon receipt of an application for review under sub-section (1), the procuring entity shall decide on whether the bid process should be suspended pending disposal of the application.</p> <p>(4) The procuring entity may, after examining the application and the documents available to him, give such reliefs as may be considered appropriate to the applicant and communicate its decision to the applicant and if required, to other bidders or prospective bidders, as the case may be.</p> <p>(5) The procuring entity shall deal with an application under sub-section (1) as expeditiously as possible and shall endeavour to dispose it of within thirty days from the date of receipt of the application or such other period as may be specified in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be.</p>	
<p>Procurement Redressal Committees.</p>	<p>39. (1) If the procuring entity fails to dispose of the application made under section 38 within the allowed time, or if the bidder or prospective bidder feels aggrieved by the decision of the procuring entity under section 38, the bidder or prospective bidder, may file an application for redressal by the concerned procurement redressal committee within fifteen days of the expiry of the allowed time under section 38 or of the date of receipt of the decision under section 38, as the case may be.</p> <p>(2) Every application for redressal under sub-section (1) shall be made in such form and manner and shall be accompanied by such fee as may be prescribed.</p> <p>(3) The Central Government shall constitute one or more independent procurement redressal committees and different procurement redressal committees may be constituted for a group of</p>	

	<p>procuring entities or for different subject matters of procurement or for different geographical areas as may be considered necessary.</p> <p>(4) Every procurement redressal committee shall consist of not less than three members including its chairperson who shall be a retired Judge of a High Court nominated by the Chief Justice of the concerned High Court.</p> <p>(5) The members of the committee shall have-</p> <ul style="list-style-type: none">(a) proven integrity and experience in public procurement; and(b) experience at senior levels in public administration or public finance or management of engineering or scientific projects or management of Central Public Sector Enterprises. <p>(6) The term of the Chairperson and members of the committee shall be for three years.</p> <p>(7) The sitting fee or honorarium and other allowances payable to the chairperson and members shall be such as may be prescribed.</p> <p>(8) On receipt of an application under subsection (1), the committee shall, after giving opportunity of being heard to the procuring entity as well as the applicant, determine as to whether the procuring entity has complied with the provisions of this Act, the rules and guidelines made thereunder and the terms of the pre-qualification, bidder registration or bidding documents, as the case may be, and communicate its recommendations, including the corrective measures to be taken, to the procuring entity and to the applicant</p> <p>(9) Upon receipt of an application under subsection (1), the committee shall hold as many sittings as considered necessary to dispose of the application.</p> <p>(10) It shall be the duty of the procuring entity to provide all necessary facilities and assistance for</p>	
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	<p>the effective functioning of the committee.</p> <p>(11) Subject to sub-section (12), every procurement redressal committee shall dispose of the application by such procedure as it may consider appropriate and consistent with the principles of natural justice.</p> <p>(12) No information which would impair the protection of essential security interests of India, or impede the enforcement of law or fair competition, or prejudice the legitimate commercial interests of the bidder or the procuring entity, shall be disclosed in a proceeding under this section.</p> <p>(13) The procurement redressal committee may recommend to the procuring entity the suspension of the procurement process pending disposal of the application, if in its opinion, failure to do so is likely to lead to miscarriage of justice.</p> <p>(14) An application filed under sub-section (1) shall be dealt with as expeditiously as possible and the committee shall, within thirty days from the date of its receipt, make its recommendations on the action to be taken by the procuring entity or the applicant or both:</p> <p>Provided that the committee may, for sufficient reasons to be recorded in writing, dispose of an application within a further period of fifteen days.</p> <p>(15) On receipt of a recommendation of the procurement redressal committee, the procuring entity shall communicate its decision thereon to the applicant and to the committee within fifteen days or such further time not exceeding fifteen days as may be considered necessary, from the date of receipt of the recommendation and in case of non-acceptance of any recommendation, the reasons for such non-acceptance shall also be mentioned in such communication.</p>	
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<p>Grievances to not relate to certain issues.</p>	<p>40. A request for review under section 38 and an application under section 39 shall not be made in regard to any decision of the procuring entity relating to the following issues, namely:-</p> <ul style="list-style-type: none"> (a) determination of need of procurement in terms of section 5; (b) provisions limiting participation of bidders in the bid process in terms of the provisions of section 6; (c) the decision of whether or not to enter into negotiations in terms of section 15; (d) cancellation of a procurement process in terms of section 27; (e) applicability of the provisions on confidentiality under section 49. 	
	<p>CHAPTER IV</p> <p>OFFENCES AND PENALTIES</p>	
<p>Punishment for taking gratification or valuable thing in respect of public procurement.</p>	<p>41. Whoever, being a public servant acting in connection with any procurement process, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification other than legal remuneration or any valuable thing without consideration or for a consideration which he knows to be inadequate, in connection with such public procurement, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.</p>	

<p>Interference with bid process.</p>	<p>42.(1) Whoever,-</p> <p>(a) interferes with or influences any procurement process with the intention of securing any wrongful gain or undue advantage for any prospective bidder or bidder; or</p> <p>(b) interferes with the procurement process with the intention of causing any unfair disadvantage for any prospective bidder or bidder; or</p> <p>(c) engages in any action or lobbying, directly or indirectly, with the objective of unduly restricting fair competition;</p> <p>(d) intentionally 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 process;</p> <p>(e) engages a former official of a 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;</p> <p>(f) engages in any form of bid-rigging, collusive bidding or anticompetitive behavior in the procurement process; or</p> <p>(g) intentionally breaches confidentiality referred to in section 49 for any undue gain,</p> <p>shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty lakh rupees or ten per cent. of the assessed value of procurement.</p> <p>(2) A bidder who-</p> <p>(a) withdraws from the procurement</p>	
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	<p>process after opening of financial bids;</p> <p>(b) withdraws from the procurement process after being declared the successful bidder;</p> <p>(c) fails to enter into procurement contract after being declared the successful bidder;</p> <p>(d) fails to provide performance security or any other document or security required in terms of the bidding documents after being declared the successful bidder,</p> <p>without valid grounds, shall, in addition to the recourse available in the bidding documents or the contract, be punished by fine which may extend to fifty lakh rupees or ten per cent. of the assessed value of procurement.</p>	
Vexatious complaints.	<p>43. Whoever intentionally makes any vexatious, frivolous or malicious complaint under this Act, with the intention of delaying or defeating any procurement or causing loss to any procuring entity or any other bidder, shall be punished with fine which may extend to twenty lakh rupees or five percent. of the value of procurement, whichever is higher.</p>	
Offences by companies.	<p>44. (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:</p> <p>Provided that nothing contained in this</p>	

	<p>sub-section shall render any such person liable for any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.</p> <p>(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.</p> <p><i>Explanation-</i> For the purpose of this section-</p> <p>"company" means a body corporate and includes a limited liability partnership, firm, registered society, trust or other association of individuals; and</p> <p>"director" in relation to a limited liability, partnership or firm, means a partner in the firm.</p>	
<p>Abetment of certain offences.</p>	<p>45. Whoever abets an offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punished with the punishment provided for the offence.</p>	

<p>Debarment from bidding.</p>	<p>46. (1) A bidder shall be debarred by the Central Government if he has been convicted of an offence –</p> <p>(a) under the Prevention of Corruption Act, 1988; or</p> <p>(b) under the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract:</p> <p>(2) A bidder debarred under sub-section (1) shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date on which it was debarred.</p> <p>(3) If a procuring entity finds that a bidder has breached the code of integrity prescribed in terms of section 11, it may debar the bidder for a period not exceeding two years;</p> <p>(4) Where the entire bid security or the entire performance security or any substitute thereof, as the case may be, of a bidder has been forfeited by a procuring entity in respect of any procurement process, procurement contract or framework agreement, the bidder may be debarred from participating in any procurement process undertaken by the procuring entity for a period not exceeding two years.</p> <p>(5) The Central Government or a procuring entity, as the case may be, shall not debar a bidder under this section unless such bidder has been given a reasonable opportunity to represent against such debarment.</p>	<p>49 of 1988.</p> <p>45 of 1860</p>
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<p>* Previous sanction necessary for prosecution.</p> <p><i>(* Retention of this section will be subject to policy decision in this regard and amendment to the relevant provision in the Prevention of Corruption Act)</i></p>	<p>47. No court shall take cognizance of an offence punishable under this Act, alleged to have been committed by a public servant during the course of his employment, except with the previous sanction,-</p> <p>(a) in case of a person, who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;</p> <p>(b) in the case of any other person, of the authority competent to remove him from his office.</p>	
	<p>CHAPTER V</p> <p>MISCELLANEOUS</p>	
<p>Requirement of professional standards, training and certification</p>	<p>48. The Central Government may prescribe professional standards to be achieved by officials dealing with procurement matters under this Act and specify suitable training and certification requirements for the same.</p>	

<p>Confidentiality</p>	<p>49. (1) Notwithstanding anything contained in this Act or any other law for the time being in force, a procuring entity shall not disclose any information if such disclosure, in its opinion, is likely to -</p> <ul style="list-style-type: none"> (a) impede enforcement of any law; (b) affect the security or strategic interests of India; (c) affect the intellectual property rights or legitimate commercial interests of bidders; (d) affect the legitimate commercial interests of the procuring entity in situations that may include when the procurement relates to a project in which the procuring entity is to make a competitive bid, or the intellectual property rights of the procuring entity. <p>(2) Except as otherwise provided in this Act, a procuring entity shall treat all communications with bidders related to the procurement process in such manner as to avoid their disclosure to competing bidders or to any other person not authorised to have access to such information.</p> <p>(3) The procuring entity may impose on bidders and sub-contractors, if there are any for fulfilling the terms of the procurement contract, conditions aimed at protecting information, the disclosure of which would violate sub-section (1).</p>	
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<p>Protection of action taken in good faith.</p>	<p>50. (1) Every official of a procuring entity or any member of a committee constituted under this Act, acting under or in pursuance of the provisions of this Act or rules, guidelines, orders or notifications made thereunder, shall be deemed to be a public servant within this meaning of section 21 of the Indian Penal Code, 1860.</p> <p>(2) No suit, prosecution or other legal proceedings shall lie against any officer or employee or any other person acting in the discharge of any function under this Act for any loss or damage caused or likely to be caused by any act which was done in good faith and in pursuance the provisions of this Act.</p> <p>(3) For the purposes of this section, 'good faith' shall have the same meaning as is assigned to it by section 52 of the Indian Penal Code.</p>	<p>45 of 1860</p> <p>45 of 1860</p>
<p>Application of other laws.</p>	<p>51. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.</p>	
<p>Recovery of sums payable under the Act.</p>	<p>52. Any sum payable by any person under this Act shall be recoverable as arrears of land revenue.</p>	

<p>Service of notice, documents and orders.</p>	<p>53. (1) For the purposes of this Act a notice, document or order shall be deemed to be served-</p> <p>(a) on any individual by –</p> <p>(i) delivering it to the person personally; or</p> <p>(ii) leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known;</p> <p>(b) on a body corporate by leaving it at, or sending it by post to, the registered office of the body corporate.</p> <p>(2) For the purposes of this Act, when the procedure laid down by sub-section (1) is followed, service shall be deemed to be effected by properly addressing, prepaying and posting the document, notice or order, as the case may be.</p>	
<p>Power of Central Government to make rules.</p>	<p>54. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act and different sets of rules may be made for different classes or categories of procurements or procuring entities.</p> <p>(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:-</p> <p>(a) procurements covered under sub-section (3) of section 3;</p> <p>(b) matters to be decided while determining need for procurement under section 5;</p> <p>(c) circumstances in which participation of bidders may be limited under section 6;</p> <p>(d) identification and treatment of</p>	

	<p>conflict of interest situations under section 7;</p> <p>(e) additional qualifications to be fulfilled by bidders under clause (f) of sub-section (1) of section 7;</p> <p>(f) time frame for various stages of the process of procurement under section 9;</p> <p>(g) information or record of procurement proceedings required to be maintained under clause (i) of sub-section (1) of section 10;</p> <p>(h) code of integrity under section 11;</p> <p>(i) guidelines for drawing up the description of the subject matter of procurement under section 12;</p> <p>(j) evaluation criteria under sub-section (1) of section 14;</p> <p>(k) maintenance of records of trials and testing sub-section (2) of section 14;</p> <p>(l) provisions relating to Price negotiations under section 15;</p> <p>(m) terms and conditions of procurement contracts under section 16;</p> <p>(n) information to be provided on the Central Public Procurement Portal under section 18;</p> <p>(o) procedure for pre-qualification under section 19;</p> <p>(p) procedure and conditions for registration of bidders under section 20;</p> <p>(q) provisions relating to content of bidding documents under Section 21;</p> <p>(r) standard conditions of bidding</p>	
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	<p>documents including its form under sub-section (3) of section 21;</p> <p>(s) procedure for submission, opening and evaluation of bids under section 25;</p> <p>(t) provisions relating to procurement against rate contracts under sub-section (3) of section 29;</p> <p>(u) procedure in respect of various methods of procurement under section 29;</p> <p>(v) provisions relating to monetary value for procurement through request for quotations and spot purchase under section 35;</p> <p>(w) procedure for framework agreements under section 36;</p> <p>(x) form, manner and fee for application for redressal under sub-section (2) of section 39;</p> <p>(y) sitting fee, honorarium and other allowances payable to members of procurement redressal committee under sub-section (7) of section 39;</p> <p>(z) professional standards, training and certification for officials dealing with procurement matters under section 48;</p> <p>(aa) provisions relating to bid securities, performance securities, inspection of works, goods and services, modification and withdrawal of bids, and contract management.</p> <p>(bb) procurement of goods, works and services;</p> <p>(cc) procurements by Central Public Sector Enterprises, for purposes of national security and strategic considerations and for entering into</p>	
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	<p>Public Private Partnerships;</p> <p>(dd) any other matter regarding which the Central Government, may consider, that Rules are required.</p> <p>(3) Every rule made by the Central Government under this Act shall be laid, as soon as maybe after it is made, before each House of Parliament, while it is in session, for a 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 to the rule or both Houses 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.</p>	
<p>Power to issue guidelines.</p>	<p>55. (1) Subject to the provisions of this Act and the rules made thereunder, a class or category of procuring entities may issue guidelines giving details of procedure or general forms or standard specifications and manuals required for giving effect to the provisions of this Act and the rules made thereunder.</p> <p>(2) Every guideline issued made by a procuring entity under this section shall be laid, as soon as maybe after it is made, before each House of Parliament, while it is in session, for a 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 to the guideline or both Houses agree that the</p>	

	<p>guideline should not be made, the guideline 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 guideline.</p>	
Power to remove difficulties.	<p>56. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:</p> <p>Provided that no order shall be made under this section after the expiry of a period of three years from the commencement of this Act.</p> <p>(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.</p>	
Power to exempt.	<p>57. (1) If the Central Government is satisfied that it is necessary in public interest so to do, it may, by order published in the Official Gazette and for reasons to be recorded in writing, exempt any procurement or a class or category of procurements or by a class of procuring entities from the application of all or any of the provisions of this Act;</p> <p>(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.</p>	
Savings.	<p>58. All rules, regulations, orders, notifications, departmental codes, manuals, bye-laws, official memoranda or circulars relating to procurement of goods, services or works provided for in this Act, which are in force on the date of commencement of this Act, shall continue to be in force to the extent they are consistent with the provisions of this Act, until they are repealed</p>	

	or superseded by any rule, guideline, notification or order, as the case may be, made or issued under this Act.	
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Matters to be included in subordinate legislation

- Detailed rules and procedure for procurement of goods, works and services and entering into Public Private Partnerships.
- Special requirements for procurement made by Central Public Sector Enterprises and for the purposes of national security and strategic considerations.
- Rules with respect to those procuring entities to which the provisions of the Act shall not apply so as to ensure that the fundamental principles of public procurement are followed in these cases also.
- Guidelines for drawing up the description of the subject matter of procurement which may include specifications, plans, drawings, symbols, terminology, standardized features, requirements, etc.
- Procedure for submission of bids, opening and evaluation of bids including constitution of committees for those purposes and procedure regarding submission of bid security, performance security and security against advances.
- Timeframe for completion of various stages of procurement process.
- Rules for identification and treatment of 'conflict of interest' situations.
- Standard terms and conditions and forms of prequalification documents, registration documents, Invitation to bid, detailed bidding document and contract documents and procedure for carrying out the pre qualification process and registration of bidders
- Procedure for restricted bidding, single source procurement, two stage bidding, electronic reverse option, request for quotation, rate or running contract and for entering into framework agreements and procurement under such agreements
- Circumstances under which price negotiations can be held by a procuring entity with the bidder

- In the case of works, guidelines for deciding whether to follow the EPC system or the item rate contract and detailed rules in this regard.
- In the case of consultancy services, the qualification of consultants and procedure for following quality and cost based selection (QCBS) and quality based selection (QBS) and other methods for selection of consultants.
- Additional provisions related to assessment of need for procurement, additional qualification of bidders, record of procurement proceedings, code of integrity, criteria for evaluation and information to be put on the portal.
