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LEGISLATIVE SUPPLEMENT

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PART I

GOVERNMENT OF PUNJAB

DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB

NOTIFICATION

The 10th September, 2019

No. 15-Leg./2019.- The following Act of the Legislature of the State of Punjab received the assent of the Governor of Punjab on the 24th day of August, 2019, is hereby published for general information:-

THE PUNJAB TRANSPARENCY IN PUBLIC PROCUREMENT ACT, 2019
(Punjab Act No. 12 of 2019)

AN
ACT

to establish legal foundations for procedures for procurement by public entities so as to ensure timely delivery of intended outcomes with efficiency, economy, integrity and accountability, transparency, fair and equitable treatment of bidders, public confidence regarding good governance in the process and for the matters connected therewith or incidental thereto.

BE it enacted by the Legislature of the State of Punjab in the Seventieth Year of the Republic of India as follows: -

Chapter I

Preliminary

Short title, extent and commencement.

1. (1) This Act may be called the Punjab Transparency in Public Procurement Act, 2019.

(2) It shall extend to the whole of the State of Punjab.

(3) It shall come into force on and with effect from the date of its publication in the Official Gazette.

Definitions.

2. In this Act, unless the context otherwise requires,-

(a) "bid" means a formal offer made in pursuance of an invitation by a procuring entity and includes any tender, proposal or quotation;

(b) "bidder" means any person, company, firm, agency, institution, etc. participating in a procurement process of a procuring entity for procurement of goods, works or services;

(c) "bidder registration documents" means the documents issued by a procuring entity, including any amendments thereto, that set out the terms and conditions of registration proceedings and includes the invitation to register;

(d) "bidding documents" means documents 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;

(e) "bid security" means a security provided to the procuring entity by a bidder for securing the fulfillment of any obligation in terms of the provisions of the bidding documents;

(f) "e-procurement" means the electronic process wherein the physical tendering activity is carried out online using the internet and associated technologies;

(g) "goods" includes all articles, material, commodities, electricity, livestock, furniture, fixtures, raw material, spares, instruments, software, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock and any other category of goods, whether in solid, liquid, gaseous or intangible form, purchased or otherwise acquired by the 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;

(h) "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;

(i) "pre-qualification" means the procedure set out to identify, prior to inviting bids, the bidders that are qualified;

(j) "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;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "procurement" or "public procurement" means the acquisition by purchase, lease, licence or otherwise of goods, services or works

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;

(m) "procurement contract" means a contract entered into between the procuring entity and a successful bidder concerning the subject matter of procurement;

(n) "procurement process" means the process of procurement extending from the issue of invitation to pre-qualify or to register or to bid till the award of the procurement contract or cancellation of the procurement process, as the case may be;

(o) "procuring entity" means an entity referred to in sub-section (2) of section 3;

(p) "Public Private Partnership" means an arrangement between the procuring entity on one side and the private sector entity on the other, for the provision of public assets or public services or both, through investments being made or management being undertaken, or both investments being made and management being undertaken, by the private sector entity, for a specified period of time, where there is well defined allocation of risk between the private sector and the procuring entity and the private entity receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the procuring entity or its representative;

(q) "rate contract" means an agreement between a procuring entity and one or more bidders which specifies the terms and conditions, including the price, for the supply of a subject matter of procurement required on a recurring basis;

(r) "registered bidder" means any bidder who is on a list of registered bidders of the procuring entity maintained under section 18;

(s) "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;

(t) "State Government" means the Government of State of Punjab in the Department of Finance;

(u) "subject matter of procurement" means any item of procurement whether in the form of goods, services or works; and

(v) "swiss challenge" means a method of procurement in which an unsolicited proposal is received for a project that predominantly involves uniqueness and specificity of design/ technology/ intellectual property for that project and third parties are allowed to challenge the original proposal through open bidding, and then the original proponent is given a chance to counter-match the most advantageous/most competitive offer; and

(w) "works" mean all works associated with the construction, reconstruction, site preparation, demolition, repair, maintenance, or renovation of 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.

Application.

3. (1) This Act shall apply to all procurements which are met from the Government Accounts, including the Consolidated Fund of the State, Public Accounts and Contingent Fund of the State.

(2) For the purposes of this Act, "procuring entity" means,-

(a) any department of the Government of Punjab or its attached or subordinate office;

(b) any Public Sector Enterprise owned or controlled by the Government of Punjab;

(c) any entity established or constituted by the Constitution of India or an Act of Parliament, whose expenditure is met from the Consolidated Fund of the State;

(d) any entity or Board or Corporation or authority or Society or Trust or Commission or autonomous body (by whatever name called) established or constituted by an Act of the State Legislature;

(e) any entity that receives grant or financial aid out of the Consolidated Fund of the State or retains any levy/user

charges/fees etc. collected from the public after being authorized to do so by the State Government and is owned or controlled or managed by the Government of Punjab;

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

(g) any procurement support agency or procurement agent or procurement consultant involved in procurement on behalf of the procuring entities specified in clauses (a) to (f) above.

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

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

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

Exemptions.

4. Subject to such rules as may be made in this behalf consistent with the provisions of sections 5 and 7 the provisions of Chapter II and III shall not apply to,-

(a) any procurement, the estimated cost or value of which is less than the threshold value as the State Government may, by notification, specify for different classes or categories of procurements or procuring entities;

(b) emergency procurement necessary for the management of any disaster, as defined in clause (d) of section 2 of the Disaster Management Act, 2005 (Central Act No. 53 of 2005);

(c) the procurement under Assembly and Parliamentary election urgency;

(d) procurement for the purposes of security or on strategic considerations that the State Government may, by general or special order, specify;

(e) procurement by a procuring entity under clause (b) to clause (f) of sub-section (2) of section 3 from its subsidiary company or joint venture company in which such procuring entity has more than fifty percent share; and

(f) any other procurement, as may be notified by the State Government.

Chapter II

General principles of public procurement

Fundamental principles.

5. (1) In relation to a public procurement, the procuring entity shall have the responsibility and accountability to,-

(a) ensure efficiency, economy and transparency;

(b) provide fair and equitable treatment to bidders;

(c) promote competition; and

(d) put in place mechanisms to prevent corrupt practices.

(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.

Documentary record of procurement proceedings and of communications.

6. (1) The procuring entity shall maintain a record of its procurement proceedings, which shall include the following, namely:-

(a) documents pertaining to determination of need for procurement under section 8;

(b) description of the subject matter of the procurement under section 12;

(c) statement of the reason for choice of a procurement method other than open competitive bidding;

(d) particulars of the participating bidders;

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

(f) bid prices and other financial terms;

(g) summary of the evaluation of bids;

(h) details of any appeal under section 49, and the related decisions; and

(i) any other information or record, as may be prescribed .

(2) Any document, notification, decision or other information generated

in the course of a procurement, including in connection with appeals under section 49 or in the course of a meeting or forming part of the record of the procurement process, shall be in a form that provides a record of the content of the information and is accessible so as to be usable for subsequent reference.

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

Code of integrity for procuring entity and bidders.

7. (1) No officer or employee of a procuring entity or a person participating in a procurement process shall act in contravention of the code of integrity as specified hitherto.

(2) The code of integrity referred to in sub-section (1) shall include the following, namely:-

(a) prohibiting,-

(i) any offer, solicitation or acceptance of any favour, 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 or the action of other party;

(ii) any omission, including a misrepresentation that misleads or attempts to mislead so as to obtain a financial or other benefit or avoid an obligation;

(iii) any collusion, bid rigging or anti-competitive behaviour to impair the transparency, fairness and progress of the procurement process;

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

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

(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; and

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

(b) timely disclosure of conflict of interest; and

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

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

(a) exclusion of the bidder from the procurement process;

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

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

(d) recovery of payments made by the procuring entity along with such interest, as may be prescribed;

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

(f) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding three years under section 56.

Chapter III

Procurement planning

Determination of need for procurement.

8. (1) The procuring entity shall to begin with determine the need for the subject matter of procurement.

(2) The procuring entity shall while assessing the need under sub-section (1) take into consideration the following matters, namely:-

(a) the scope or quantity of procurement;

(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 13, if any applicable, and justification thereof;

(e) estimated cost of procurement;

(f) timeline for procurement; and

(g) any other matter as may be prescribed.

Annual procurement plan.

9. (1) The procuring entity shall prepare an annual procurement plan before/at the beginning of every financial year.

(2) A procuring entity shall take into consideration the matter specified in sub-section (2) of section 8 while preparing its annual procurement plan in a rational manner and in particular shall,-

(a) avoid emergency procurement, wherever possible;

(b) aggregate its requirements, wherever possible, both within the procuring entity and between procuring entities, to obtain value for money and reduce procurement costs;

(c) avoid splitting of procurement; and

(d) integrate its procurement budget with its expenditure programme.

(3) The annual procurement plan, including its updates, shall atleast contain the following, namely:-

(a) a brief description of goods, works or services for which procurement is to take place during the respective financial year;

(b) the proposed methods of procurement pursuant to the provisions in this Act and the rules made there under;

(c) any provision of preference in accordance with section 13 of this Act;

(d) the time schedule for key procurement activities; and

(e) such other matter, as may be prescribed.

(4) The annual procurement plan prepared pursuant to sub-section (3) may be further updated by the procurement entity with the approval of the concerned Administrative Department, provided that the updated plan shall remain within the approved Annual Budgetary Allocation for the procurement entity.

(5) The procuring entity shall publish the annual procurement plan prepared pursuant to sub-section (3) of this section on the State Public Procurement Portal and on the website of the concerned procuring entity:

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

Chapter IV

Pre-tendering

Obligations related to value of procurement.

10. (1) A procuring entity shall obtain the approval of the authority having the necessary financial powers before initiating a procurement process.

(2) A procuring entity shall neither split its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid its obligation under sub-section (1) or to limit competition among bidders or otherwise avoid its obligations under this Act:

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

Time frame for processing.

11. (1) Subject to the rules as may be made by the State Government in this behalf, every procuring entity shall pre-determine a reasonable time frame for completion of various stages of the process of procurement and indicate the same in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be.

(2) The procuring entity shall endeavour to adhere to the time frame indicated under sub-section (1) and in case of failure to do so extend such time frame for reasons to be recorded in writing.

Chapter V

Tendering

Description of the subject matter of procurement.

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, –

(a) be such as to meet the essential needs of the procuring entity;

(b) to the extent practicable-

(i) be objective, functional, generic and measurable;

(ii) set out the relevant technical, quality and performance characteristics; and

(iii) not indicate a requirement for a particular trade mark, trade name or brand.

(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 and in their absence, relevant International Standards may be used.

Participation of bidders.

13. (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.

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

(a) the promotion of domestic industry;

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

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

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

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

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

(a) to protect public order, morality or safety; or

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

(c) to protect intellectual property; or

(d) to protect the essential security and strategic interest of India.

Qualifications of bidders.

14. (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.

(2) Any bidder participating in the procurement process shall,-

(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 fulfilled his obligation to pay taxes payable to the Central Government or the State Government or any local authority as may be specified in the bidding documents, pre- qualification documents or bidder registration documents;

(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 any of the foregoing reasons;

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

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

(f) fulfil any other qualifications as may be prescribed.

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

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

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

Single envelope and two envelope bids.

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

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

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

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

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

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

Pre-qualification of bidders.

16. (1) A procuring entity may engage in a pre-qualification process, with a view to identifying, prior to inviting bids, the bidders that are qualified for any specified period of time.

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

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

(4) The procuring entity shall decide who is pre-qualified in accordance with section 14 and the criteria set out in the pre-qualification documents.

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

Post qualification of bidders.

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

(2) The post qualification criteria shall itself be laid out in the bidding documents and if the bidder fails to meet any of these criteria, the bid shall be rejected and the procuring entity shall make a similar determination for the next lowest evaluated bid in the case of procurement and next highest bid in the case of disposal of public asset by bidder.

(3) A procuring entity may require a bidder who has submitted a lowest evaluated bid in the case of procurement or highest evaluated bid in the case of disposal of public asset by bid to demonstrate again its qualifications before the award of contract is confirmed.

(4) The criteria and procedures to be used in sub-section (3) shall be the same as those used in the pre-qualification proceedings set out in section 16 of this Act and shall be specified in the bidding documents prepared by the procuring entity.

(5) The procuring entity shall, where bidder with the lowest or highest evaluated bid fails to post-qualify, reject its bid and select the next lowest or highest evaluated bid from the remaining bids, provided the procuring entity has a right to reject all remaining bids in accordance with section 24.

Registration of bidders.

18. (1) With a view to establishing reliable sources for a subject matter of procurement or a class of procurement, which may be commonly required across procuring entities or repeatedly required by a procuring entity, a procuring entity may maintain a panel of registered bidders.

(2) For the purpose of sub-section (1), a procuring entity may invite offers from prospective bidders by giving wide publicity to the invitation to register and such registration shall be done in accordance with section 14, this section and the criteria set out in the bidder registration documents.

(3) The procuring entities shall update the list of registered bidders by allowing potential bidders to apply for registration on a continuous basis or by inviting offers for registration at least once in a year.

(4) The State Government may prescribe the procedure and conditions for registration of bidders and the period for which such registration shall be valid.

(5) Where a procuring entity does not register bidders in respect of a subject matter of procurement, it may use the list of registered bidders of other procuring entity, if any.

(6) The results of the registration process shall be intimated to the bidders and the list of registered bidders for the subject matter of procurement shall be published on the State Public Procurement Portal.

Standard bidding documents.

19. (1) A procuring entity shall use such standard bidding documents, as may be prescribed, for the purpose of procurement.

(2) Any deviation from the use of standard bidding document by a procuring entity shall only be with reasons to be recorded in writing and with due approval of the appropriate authority of the procuring entity.

Time frame for submission of bids.

20. (1) A procuring entity, while fixing the last date by which bids are to be submitted by the bidders, shall take into account,-

(a) the need of the bidders for having a reasonable time to prepare and submit their bids; and

(b) the period for effecting procurement as envisaged in annual procurement plan and bidding document.

(2) Subject to the provisions of section 22, the maximum time as may be allowed for submission of bids shall be the same for all bidders.

Pre-bid clarifications.

21. (1) Any bidder may, in writing, seek clarifications from the procuring entity in respect of the bidding documents.

(2) The period within which the bidders may seek clarifications under sub-section (1) and the period within which the procuring entity shall respond to such requests for clarifications shall be specified in the bidding documents.

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

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

Changes to bidding documents.

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

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

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

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

Procedure relating to submission, opening and evaluation of bids.

23. 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 these purposes shall be in accordance with the rules as may be made.

Exclusion of bids.

24. (1) A procuring entity shall exclude a bid if,-

(a) the bidder is not qualified in terms of section 14; or

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

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

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

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

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

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

(a) communicated to the concerned bidder in writing; and

(b) published on the State Public Procurement Portal.

Cancellation of the procurement process.

25. (1) A procuring entity may, for reasons to be recorded in writing, cancel the process of procurement initiated by it,-

(a) at any time prior to the acceptance of the successful bid; or

(b) after the successful bid is accepted in accordance with sub-sections (4) and (5).

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

(3) The decision of the procuring entity to cancel the procurement alongwith the reason to do so shall be immediately communicated to all the bidders who participated in the procurement process.

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

(5) If a bidder is convicted of any offence under this Act, the procuring entity may,-

(a) cancel the relevant procurement process if the bid of the convicted bidder has been declared as successful but no procurement contract has been entered into; or

(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.

Blacklisting.

26. (1) A procuring entity shall have the power to blacklist a bidder for a specified time from participating in public procurement proceedings and inform, in writing, all procuring entities of such actions.

(2) A bidder who has been blacklisted and/or debarred from taking part in public procurement by an international organization or by Government of India or any other State Government, shall automatically be blacklisted from participating in public procurement in the State for such period as is

debarred by that international organization or Government of India or any other State Government, as the case may be.

(3) A bidder shall be black listed from participating in public procurement or disposal proceedings if,-

(a) fraud or corrupt practice is established against the bidder in accordance with the provisions of this Act; or

(b) the bidder fails to abide with a bid securing declaration; or

(c) the bidder breaches a procurement contract; or

(d) the bidder makes false representation about his qualifications during bid proceeding.

(4) Subject to sub-section (3), the procedure for blacklisting shall be such, as may be prescribed.

(5) A bidder blacklisted pursuant to this section may appeal against such decision within twenty one days from the date when he became aware or should have become aware of such a decision.

(6) A procuring entity shall keep and maintain a record of all blacklisted firms in such manner, as may be prescribed.

(7) A bidder blacklisted under this section shall not be eligible to bid through a new supplies, contracting or consulting or services firm for the purpose of public procurement during the period of blacklisting.

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

(9) The procuring entity shall inform the relevant professional bodies, if applicable, upon blacklisting a bidder.

(10) For the purpose of this section, a blacklisted bidder shall include all the director(s)/partners/proprietors/associates/promoters of the company or firm or limited liability partnership, as the case may be.

Chapter VI

Procurement methods

Methods of procurement.

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

(a) Open Competitive Bidding; or

(b) Limited Bidding; or

(c) Two stage Bidding; or

(d) Single Source Procurement; or

(e) Reverse Auction; or

(f) Request for Quotations; or

(g) Spot Purchase; or

(h) Competitive negotiations; or

(i) Rate Contract; or

(j) Government e-Market (GeM); or

(k) Swiss Challenge; or

(l) any other method of procurement notified by the State Government satisfying the principles of procurement contained in this Act and which the State Government considers necessary in public interest.

(2) Except as provided in section 33 of this Act, E-procurement shall be compulsory for different stages and types of procurement to be carried out under this Act. Every requirement for written communication under this Act shall, therefore, be deemed to have been satisfied if it were done by electronic means:

Provided that, in case, a procuring entity chooses to carry out public procurement under this Act, through physical means, it shall be only after a prior approval of the Administrative Department.

(3) In procuring a subject matter of procurement, every procuring entity shall follow such procedure in respect of the relevant method of procurement, as may be prescribed.

(4) The financial limit for each of the procurement method shall be such, as may be prescribed.

Open competitive bidding.

28. (1) Every procuring entity shall prefer the open competitive bidding as the most preferred method of procurement to be followed.

(2) Open competitive bidding may also be followed in case of two stage bidding in terms of section 31, reverse auction in terms of section 32 and rate contract in terms of section 35.

(3) The procuring entity may follow the pre-qualification procedure specified in section 16 and invite bids from pre-qualified bidders only.

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

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

Limited bidding.

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

(a) the subject matter of procurement can be supplied only by a limited number of bidders; or

(b) the time and cost involved to examine and evaluate a large number of bids may not be commensurate with the value of the subject matter of procurement; or

(c) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding; or

(d) procurement from a category of prospective bidders is necessary in terms of sub-section (2) of section 13.

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

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

(i) all the bidders who can supply the subject matter of procurement in terms of clause (a) of sub-section (1); or

(ii) all the bidders who are registered for the subject matter of procurement with the procuring entity or with any other procuring entity, where procuring entity uses the list of registered bidders of such other procuring entity in terms of sub-section (5) of section 18; 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); and

(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.

Single source procurement.

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

(a) the subject matter of procurement is available only from a particular prospective bidder, or a particular prospective bidder has exclusive rights with respect to the subject matter of procurement, such that no reasonable alternative or substitute source exists, and the use of any other procurement method would, therefore, not be possible; or

(b) owing to a sudden unforeseen event, there is an extremely urgent need for the subject matter of procurement, and engaging in any other method of procurement would be impractical; or

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

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

(e) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of national security interests; or

(f) procurement from a particular prospective bidder is necessary in terms of sub-section (2) of section 13; or

(g) subject matter is of artistic nature; or

(h) subject matter of procurement is of such nature as requires the procuring entity to maintain confidentiality.

(2) Subject to the rules as may be made in this behalf, the procedure for single source procurement shall include the following, namely:-

(a) the procuring entity shall solicit a bid from a single prospective bidder; and

(b) the procuring entity may engage in negotiations in good faith with the bidder.

Two stage bidding.

31. (1) A procuring entity may choose to procure the subject matter of procurement by the method of two stage bidding, if,-

(a) it is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or

(b) the character of the subject matter of procurement is subject to such rapid technological advances and market fluctuations to make open competitive bidding unfeasible; or

(c) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or

(d) the bidder is expected to carry out a detailed survey or investigation and undertake comprehensive assessment of risks, costs, and obligations associated with the particular procurement.

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

(a) in the first stage of the bidding process, the procuring entity shall invite bids containing the technical aspects and contractual terms and conditions of the proposed procurement without a bid price;

(b) all first stage bids, which are otherwise eligible, shall be evaluated in accordance with the procedure laid down in the rules through an appropriate committee constituted by the procuring entity;

(c) the committee may hold discussions with the bidders and if any such discussion is held, equal opportunity shall be given to all bidders to participate in the discussions;

(d) in revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the fundamental nature of the procurement itself, but may add, amend or delete any specifications of the subject matter of procurement or criterion for evaluation;

(e) notwithstanding anything contained in sections 28 and 29, 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; and

(f) any bidder, invited to bid but not in a position to supply the subject matter of procurement due to changes in the specifications, may withdraw from the bidding proceedings without forfeiting any bid security that he may have been required to provide or being penalized in any way, by declaring his intention to withdraw from the procurement proceedings with adequate justification.

Reverse auction.

32. (1) A procuring entity may choose to procure a subject matter of procurement by the method of reverse auction, if,-

(a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement;

(b) there is a competitive market of bidders anticipated to be qualified to participate in the reverse auction, such that effective competition is ensured; and

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

(2) Subject to the rules as may be made in this behalf, the procedure for reverse auction shall include the following, namely:-

(a) the procuring entity shall invite bids to the reverse auction by causing an invitation to be published in accordance with sub-section (5) of section 28 or issued in accordance with sub-section (2) of section 29, as the case may be; and

(b) the invitation shall, in addition to the information as set out in bidding documents, include details relating to,–

(i) access to and registration for the auction;

(ii) opening and closing of auction;

(iii) norms for conducting the auction; and

(iv) any other information as may be relevant to the method of procurement.

(3) Reverse auction may also be used for obtaining the best financial bid in two stage bidding under section 31 and where the two envelope bid system is followed in terms of section 15.

Request for quotations and spot purchase.

33. (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:-

(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 that are urgently required for maintenance or emergency repairs.

(2) Subject to the rules as may be made in this behalf, the procedure for request for quotations shall include the following, namely:-

(a) quotations shall be requested from as many potential bidders as practicable, subject to a minimum of three;

(b) each bidder shall be permitted to submit only one quotation; and

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

(3) A procuring entity may do a spot purchase of the subject matter of procurement specified in sub-section (1) through a purchase committee comprising three members within the procuring entity and in such cases the purchase committee shall record a certificate to the effect that it is satisfied that the goods or services are of requisite quality and are priced at the prevailing market rate.

(4) Nothing contained in sections 6, 8, 10, 11, 12, 13, 14, 15, 16, 18, 21, 22, 23, 24, 25, 39, 40, 41, 42, 43 and Chapter XI shall apply to purchases made under this section.

Competitive negotiations.

34. (1) A procuring entity may choose to procure a subject matter of procurement by the method of competitive negotiations, if,-

(a) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of

procurement cannot be usefully obtained by adopting the method of open competitive bidding or any other method; or

(b) the subject matter of procurement involves livestock, agricultural produce, power or other items whose prices fluctuate frequently and in the opinion of the procuring entity the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding or any other method.

(2) Subject to the rules as may be made in this behalf, the procedure for competitive negotiation shall include the following, namely:-

(a) purchase of the subject matter of procurement under this section shall be made through a purchase committee 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 subject matter of procurement is of requisite quality and are priced at the prevailing market rate;

(b) to ensure effective competition, an adequate number, not being less than three, of potential bidders selected in a non-discriminatory manner shall be included in the procurement process; and

(c) an equal opportunity shall be given to all bidders to participate in the negotiations.

(3) Nothing contained in sections 6, 8, 10, 11, 12, 13, 14, 15, 16, 18, 21, 22, 23, 24, 25, 39, 40, 41, 42, 43 and Chapter XI shall apply to purchases made under this section.

Rate contract.

35. (1) A procuring entity may choose to engage in a rate contract procedure in accordance with the rules as may be made in this behalf, where it determines that the need for the subject matter of procurement is expected to arise on an indefinite or repeated basis during a given period of time;

(2) A procuring entity may award a rate contract based on open competitive bidding or by means of other procurement methods in accordance with the provisions of this Act.

(3) Subject to the rules as may be made in this behalf, the procedure for rate contract shall include the following, namely:-

(a) the manner in which rate contract is to be entered into, 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 rate contract procedure.

Government E-Market (GeM).

36. (1) The Government of India hosts an online Government e-Market Place (GeM) on pilot basis, for common use goods and services. The electronic and online procurement process on GeM is end to end from placement of supply order to payment to suppliers.

(2) A procuring entity may view, compare and directly purchase online, the goods and services offered by various suppliers on GeM under such conditions, as may be prescribed.

Swiss Challenge.

37. (1) A procuring entity may choose to procure the subject matter of procurement by the method of Swiss Challenge, under such conditions, as may be prescribed.

(2) The procedure for Swiss Challenge shall be such, as may be prescribed.

Additional conditions for use of methods of procurement.

38. Notwithstanding anything contained in sections 29 to 35 (both inclusive), the State Government may through notification, add the conditions for the use of any of the methods of procurement mentioned in clauses (b) to (i) of sub-section (1) of section 27, in a manner that is consistent with the principles of transparency and accountability.

Chapter VII

Bid evaluation and contracting

Criteria for evaluation.

39. (1) Save as otherwise provided in this Act or the rules or guidelines made thereunder or in any other law presently in force, the evaluation criteria shall relate to the subject matter of procurement and may include,-

(a) the price;

(b) the cost of operating, maintaining and repairing goods or works, the time for delivery of goods, completion of works or provision of services, the characteristics of the subject matter of procurement, such as the functional characteristics of goods or works and the environmental characteristics of the subject matter, the terms of payment and of guarantees in respect of the subject matter of procurement; and

(c) where relevant, the experience, reliability and professional and technical competence of the bidder and of the personnel to be involved in providing the subject matter of procurement.

(2) Where considered necessary, the procuring entity may also specify trials, sample testing and other additional methods of technical evaluation of a bid:

Provided the requirement of such trials, sample testing or additional methods of evaluation shall be indicated in the bidding documents and a record of such trials and testing shall be maintained in such manner, as may be prescribed.

(3) To the extent practicable, all non-price evaluation criteria shall be objective and quantifiable.

(4) The criteria for evaluation of bids, including whether the requirements laid down in sub-section (2) of section 13 are applicable, shall be contained in the bidding documents.

(5) Where applicable, the relative weights to be attached to each criterion shall be specified in the bidding documents.

(6) No criteria or procedure, other than those mentioned in the bidding documents shall be used by the procuring entity in evaluating bids.

Price negotiations.

40. Save as otherwise provided in section 30 or section 34 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, except in certain exceptional situations and in such exceptional circumstances, negotiations will only be with the lowest bidder for procurement.

Terms and conditions of contracts.

41. (1) The terms and conditions of the procurement contracts entered into shall be in accordance with the provisions of this Act and the rules made thereunder and the conditions indicated in the bidding documents.

(2) The State Government shall prescribe standard terms and conditions of contract separately for goods, works and services, as may be applicable.

(3) The standard terms and conditions prepared in pursuance of sub-section (2) shall be incorporated in the procurement contracts entered into by procuring entities as applicable. The procuring entity shall include special terms and conditions specific to subject matter of the procurement.

Award of contract.

42. (1) Subject to the provisions of sub-section (2) of section 13 and section 24, the procuring entity shall consider a bid as successful,-

(a) where price is the only award criterion, the bid with the lowest bid price in case of procurement or the highest bid price in case of disposal of public asset.

(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; or

(c) where there are no financial criteria, the most advantageous bid ascertained on the basis of selected non-financial criteria or other parameters for evaluating bids as specified in the bidding documents.

(2) A bid shall be treated as successful in terms of sub-section (1), only after the competent authority has approved the procurement in terms of that bid.

(3) As soon as the procuring entity, with the approval of the competent authority, decides to accept a bid, it shall communicate that fact to all participating bidders and also publish the decision on the State Public Procurement Portal.

(4) While communicating acceptance of the bid, the procuring entity shall advise the successful bidder to complete the requirements within a specified time, including signing of any agreement or furnishing any security, if necessary, to conclude the procurement contract.

Chapter VIII

State Public Procurement Portal

State Public Procurement Portal.

43. (1) The State Government shall set up and maintain a State Public Procurement Portal accessible to the public for posting matters relating to public procurement.

(2) Each procuring entity shall cause the procurement related information to be published as required under this Act or the rules and guidelines made thereunder on the Portal referred to in sub-section (1), including amendments on a time-to-time basis.

(3) Without prejudice to the generality of sub-section (2), the State Public Procurement Portal shall provide access to the following information in relation to procurement governed by the provisions of this Act, namely:-

(a) annual procurement plans;

(b) pre-qualification documents, bidder registration documents, bidding documents and any amendments, clarifications including those pursuant to pre-bid conference, and corrigenda thereto;

(c) list of bidders who presented bids including during pre-qualification or bidder registration, as the case may be;

(d) list of pre-qualified and registered bidders, as the case may be;

(e) list of bidders excluded under section 24, with reasons;

(f) decisions under sections 49 and 50;

(g) details of successful bids, their prices and bidders;

(h) particulars of bidders who have been blacklisted under section 26 alongwith the name of the procuring entity, cause for the blacklisting action and the period of blacklisting; and

(i) data on resolution of complaints related to procurement.

(4) All procurement to be made by the procuring entity shall atleast be published on the State Public Procurement Portal.

(5) The State Public Procurement Portal shall also contain such other information, as may be prescribed.

Chapter IX

Institutional Arrangement

Confidentiality.

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

(i) impede enforcement of any law; or

(ii) affect the security or strategic interests of India; or

(iii) affect the intellectual property rights or legitimate commercial interests of bidders; or

(iv) affect the legitimate commercial interests of the procuring entity.

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

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

(4) Notwithstanding anything to the contrary contained in any other law for the time being in force, where any expenditure is to be incurred on any procurement of goods, works or services, it shall be the duty of the officer as may be designated by the procuring entity under this Act to ensure that the procurement of goods, works or services is in accordance with the procedures specified in this Act or rules made thereunder.

Procurement Facilitation.

45. (1) The State Government may establish a Directorate of Procurement Policy and Enforcement which shall be headed by an officer not below the rank of a Special Secretary to the State Government.

(2) The Directorate shall draw the officials from various Administrative Departments of the Government of Punjab, including from its Law Enforcement Agencies or procuring entities, on deputation basis to discharge the functions entrusted upon it.

(3) The Directorate shall discharge the following functions, namely:-

(a) to maintain and update the State Public Procurement Portal set up under section 43;

(b) to arrange for training and certification;

(c) to recommend to the State Government measures for effective implementation of the provisions of this Act;

(d) to provide guidance, consistent with the provisions of this Act and the rules and guidelines made thereunder, to the procuring entities with respect to the matter relating to public procurement;

(e) to study different methods of public procurement and prepare and recommend standard bidding documents, pre-qualification documents or bidder registration documents; and

(f) to discharge such other functions, as may be assigned to it by the State Government.

(4) The Directorate shall have the power to require a procuring entity or any other person by notice in writing to furnish such information as may be necessary for performing its functions under this Act. The information shall be kept confidential till the procurement process is completed.

Officers and employees to be public servants.

46. Every officer or employee of a procuring entity or any member of a committee constituted under this Act, acting under or in pursuance of the provisions of this Act or rules, guidelines, orders or notifications made thereunder, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act No. 45 of 1860).

Protection of action taken in good faith.

47. No suit, prosecution or other legal proceedings shall lie against any officer or employee or any other person acting in the discharge of any function under this Act for any loss or damage caused or likely to be caused by any act which is done or intended to be done in good faith and in pursuance of the provisions of this Act.

Chapter X

Procurement Performance Management

48. The audit of each procuring entity shall, in the audit report, include whether the provisions of this Act and rules made thereunder have been complied with for all procurements. Audit.

Chapter XI

Appeal

49. (1) Subject to section 50, if any bidder or prospective bidder is aggrieved that any decision, action or omission of the procuring entity is in contravention to the provisions of this Act or the rules or guidelines issued thereunder, he may file an appeal to such officer of the procuring entity, as may be designated by the procuring entity for the purpose, within such period, as may be prescribed clearly giving the specific ground or grounds on which he feels aggrieved: Appeals.

Provided that after the declaration of a bidder as successful in terms of section 42, the appeal may be filed only by a bidder who has submitted a bid with the procuring entity:

Provided further that in case a procuring entity evaluates the technical bid before the opening of the financial bid, an appeal related to the matter of financial bid may be filed only by a bidder whose technical bid is found to be acceptable.

(2) On receipt of an appeal under sub-section (1), the officer designated under that sub-section shall, after affording a reasonable opportunity of being heard to the parties, determine as to whether or not the procuring entity has complied with the provisions of this Act, the rules and guidelines made thereunder and the terms of the pre-qualification documents, bidder registration documents or bidding documents, as the case may be, and pass an order accordingly which shall be final and binding on the parties to the appeal.

(3) The officer to which an appeal may be filed under sub-section (1) shall be specified by the procuring entity in the pre-qualification documents, bidder registration documents or bidding documents, as the case may be.

(4) While hearing an appeal under this section, the officer concerned shall follow such procedure, as may be prescribed.

(5) No information that would impair the protection of essential security interests of India, or impede the enforcement of law or fair competition, or prejudice the legitimate commercial interests of the bidder or the procuring

entity, shall be disclosed in a proceeding under this section.

Appeal not to lie in certain cases.

50. No appeal under section 49 shall lie against any decision of the procuring entity relating to the following matters, namely:-

(a) determination of need of procurement in terms of section 8;

(b) provisions limiting participation of bidders in the bid process in terms of the provisions of section 13;

(c) the selection of a procurement method in terms of chapter VI;

(d) the decision of whether or not to enter into negotiations in terms of section 40;

(e) cancellation of a procurement process in terms of section 25;

(f) applicability of the provisions of confidentiality under section 44; and

(g) any other matter as may be prescribed.

Chapter XII

Offence and Penalties

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

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

Interference with procurement process.

52. (1) Whoever,-

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

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

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

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

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

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

(g) intentionally breaches confidentiality referred to in section 44 for any undue gain,

shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine which may extend to fifty lakh rupees or ten per cent of the assessed value of procurement, whichever is less.

(2) A bidder who,-

(a) withdraws from the procurement process after opening of financial bids; or

(b) withdraws from the procurement process after being declared the successful bidder; or

(c) fails to enter in to procurement contract after being declared the successful bidder; or

(d) fails to provide performance security or any other document or security required in terms of the bidding documents after being declared the successful bidder, without valid grounds,

shall in addition to the provisions of section 26 be punished with fine which may extend to fifty lakh rupees or ten per cent of the assessed value of procurement, whichever is less.

Vexatious appeals or complaints.

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

Offences by companies.

54. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable for any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purpose of this section,-

(i) "company" means a body corporate and includes a limited liability partnership, firm, registered society or co-operative society, trust or other association of individuals; and

(ii) "director" in relation to a limited liability partnership or firm, means a partner in the firm.

Abetment of certain offences.

55. 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.

Debarment from bidding.

56. (1) A bidder shall be debarred by the State Government if he has been convicted of an offence,-

(a) under the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1988); or

(b) under the Indian Penal Code, 1860 (Central Act No. 45 of 1860) or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

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

(3) If a procuring entity finds that a bidder has breached the code of integrity specified in section 7, it may debar the bidder for a period not exceeding three years.

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

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

Previous sanction necessary for prosecution.

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

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

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

Chapter XIII

Miscellaneous

Application of other laws.

58. 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.

Recovery of sums payable under the Act.

59. Any sum payable by any person under this Act shall be recoverable as arrears of land revenue in terms of the provisions of the Punjab Land Revenue Act, 1887 (Punjab Act No. XVII of 1887).

Power to make rules.

60. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this section, shall be laid, as soon as may be, after it is made, before the House of the State Legislature while it is in session for a total period of ten days, which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rule or the House agrees 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, however any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

Power to issue guidelines.

61. Subject to the provisions of this Act and the rules made thereunder the State Government may issue guidelines for giving effect to the provisions of this Act and the rules made there under.

Power to remove difficulties.

62. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly.

Power to exempt.

63. (1) If the State Government is satisfied that it is necessary in public interest so to do, it may, by order published in the Official Gazette and for reasons to be recorded in such order, exempt any procurement or a class or category of procurements or a class or category of procuring entities from the application of all or any of the provisions of this Act.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before the Legislative Assembly.

Savings.

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

S.K. AGGARWAL,
Secretary to Government of Punjab,
Department of Legal and Legislative Affairs.

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