

The Public Procurement Act, 2063 (2007)

Date of certification and publication

30 paush 2063 (14 January 2007)

Act number 36 of the year 2007

An Act Made to Provide for Public Procurement

Preamble: Whereas, it is expedient to make legal provisions in order to make the procedures, processes and decisions relating to public procurement much more open, transparent, objective and reliable,

obtain the maximum returns of public expenditures in an economical and rational manner by promoting competition, fairness, honesty, accountability and reliability in public procurement processes, and;

ensure good governance by enhancing the managerial capacity of procurement of public entities in procuring, or causing to be procured, construction work and procuring goods, consultancy services and other services by such entities and by ensuring the equal opportunity for producers, sellers, suppliers, construction entrepreneurs or service providers to participate in public procurement processes without any discrimination;

Now, therefore, the House of Representatives has enacted this Act in the First Year of the issuance of the Proclamation of the House of Representatives, 2007.

CHAPTER- 1

Preliminary

1. **Short Title and Commencement:** (1) This Act may be called "Public Procurement Act, 2007."

(2) It shall come into force immediately.

2. **Definitions:** Unless the subject or context otherwise requires, in this Act,-

- (a) “Procurement” means acquisition of any goods, consultancy services or other services or carrying out or causing to be carried out any construction works, by a public entity pursuant to this Act;
- (b) “Public Entity” means the following entity:-
- (1) Constitutional organ or body, Court, Ministry, Secretariat, Commission, Department of the Government of Nepal or any other Governmental Entity or Office thereunder,
 - (2) Corporation, Company, Bank or Board owned or controlled fully or in majority by the Government of Nepal or Commission, Institute, Authority, Corporation, Academy, Board, Center, Council established at the public level or formed by the Government of Nepal under the laws in force and other corporate body of a similar nature,
 - (3) University, College, Research Center, which is operated by the Government of Nepal or receives grants fully or in majority from the Government of Nepal, and other Academic or Educational Institution of a similar nature,
 - (4) Local body,
 - (5) Development Board formed under the Development Board Act, 1956,
 - (6) Body operated with loan or grant of the Government of Nepal, and
 - (7) Other Bodies as specified by the Government of Nepal by publishing a notification in the Nepal Gazette, as a Public Entity;
- (c) “Goods” means any kind of object, whether movable or immovable, and this term includes services incidental to the supply of such goods;
- (d) “Construction Work” means work such as site preparation, excavation,

erection, building, installation of equipment or goods and decoration etc, associated with the construction, reconstruction, demolition, repair or renovation of any structure or works, and this term also includes services incidental to construction work such as mapping, laboratory testing, satellite photography and seismic investigation;

- (e) “Consultancy Service” means any study, research, survey, design, drawing, supervision, training, testing, software development service or other intellectual or professional service of a similar nature;
- (f) “Other Services” means the act of hiring motor vehicles, equipment or goods, carriage or repair and maintenance of goods;
- (g) “Bid” means a document setting out price, proposal or rate submitted by a bidder in the format specified by a Public Entity as per the notice published by that entity for procurement;
- (h) “Bidder” means any person, firm, organization or company that submits or may submit bid to take part in procurement proceedings;
- (i) “Bidding Document” means a document prepared by the concerned Public Entity making invitation to bid for submission by bidders by filling up or preparing price or proposal or rate in such document and this term also includes instructions to bidders, specifications, drawing, design, terms of reference, schedule of work, evaluation criteria, bill of quantities, conditions of contract and similar other documents;
- (j) “Procurement Contract” means a procurement contract entered into between a Public Entity and a supplier or construction entrepreneur or consultant or service provider pursuant to Section 52;
- (k) “Public Procurement Monitoring Office” means the Public Procurement Monitoring Office established under Section 64;
- (l) "Competent Authority" means an authority authorized under this Act or

the rules made thereunder to approve proceedings regarding procurement;

- (m) “Security” means retention money or earnest money furnished as security pending the completion of any obligation/work, and this term also includes bid security or performance security or an amount furnished for security required to be so furnished for any other reason;
- (n) “Special Circumstance” means a circumstance resulted from natural or divine calamity and sudden or unexpected special circumstance such as drought, no rainfall, deluge, earthquake, flood, landslide and firing, and this term also includes a circumstance such as war or internal conflict;
- (o) “Local Body” means Village Development Committee, Municipality or District Development Committee constituted under the Local Self-governance Act, 1998;
- (p) “Joint Venture” means the act of carrying out any work jointly by two or more companies or firms with joint or several liabilities;
- (q) “Agent” means any person, firm or company who takes agency of any national or foreign person, firm or company;
- (r) “One Level Higher Authority” means in relation to governmental entities, in the case of the head of office, the head of a regional office where there is such regional office and the departmental head of the concerned department where there is no regional office, in the case of regional head, the departmental head of the concerned department, in the case of departmental head, the secretary to the concerned ministry, secretariat or commission, in the case of a Secretary, the concerned departmental Minister or Minister of state, and in the case of a Secretary or administrative head of a constitutional organ or body, the head of the concerned constitutional organ or body and in the case of other public

entities, the head of an entity that is one level higher than the procuring entity and the board of directors or similar other body of such Public Entity where there is no such entity;

- (s) “Donor Party” means any foreign country or international or foreign organization, which provides foreign assistance in the form of loan or grant to the Government of Nepal under a bilateral or multilateral agreement;
- (t) “Ration” means the goods in-kind specified by the Government of Nepal in respect of food for the Nepal Army, Nepal Police, Armed Police Force and governmental employees specified by the Government of Nepal; patients at hospitals, detainees in prisons, animals and birds etc;
- (u) “Prescribed” or “as prescribed” means prescribed or as prescribed in the rules framed under this Act.

3. Procurement to be made as per this Act: (1) In making procurement, a Public Entity shall have to make such procurement by complying with the procedures set out in this Act.

(2) Any procurement made in such a manner as to be contrary to Sub-section (1) shall be void and invalid.

Chapter-2

Provisions Relating to Responsibility for Procurement and Procurement Methods

4. Description of Goods, Construction Works and Services to be Prepared:

(1) Prior to procuring goods, construction works or services, a Public Entity shall have to prepare a specifications, plan, drawing, design, special requirement or other descriptions pertaining thereto.

(2) The description as referred to in Sub-section (1) shall be prepared on the basis of relevant objective technical and quality characteristics and functions of such goods, construction works or services.

(3) In preparing the description pursuant to sub-Sections (1) and (2), unless there exists any other way of mentioning clearly in an intelligible manner the characteristics of the goods, construction works or services, a particular brand, trademark, name, patent, design, type, origin or producer's name cannot be mentioned .

Provided that where there is no other way than such mentioning, a particular brand, trademark, name, patent, design, type, origin or producer's name shall be mentioned and the words "equivalent to" shall be mentioned thereafter.

(4) In mentioning in the bidding documents or prequalification documents, the description of the technical or quality characteristics of the goods or construction works or other services, and requirements or symbols or terminologies relating to testing, marking, packaging, labeling or conformity certificate, no description, requirements, symbols or terminologies can be so mentioned as to be irrelevant to the function of such goods or construction works or services, to create obstacles, in any manner, to participation by qualified bidders in the procurement process or to limit competition without any justification.

- 5. Cost Estimate to be Prepared:** (1) A Public Entity shall have to prepare a cost estimate as prescribed for any procurement whatsoever.

Provided that a cost estimate shall not be required for any procurement valuing up to twenty five thousand rupees.

(2) A Public Entity shall update as prescribed the cost estimate prepared pursuant to Sub-section (1).

6. **Procurement Plan to be Prepared:** A Public Entity shall, in making procurement valued at an amount in excess of the prescribed limit, have to prepare a master procurement plan and annual procurement plan, as prescribed.
7. **Responsibility Towards Procurement Activities:** (1) The chief of the concerned Public Entity shall be responsible for preparing a procurement plan pursuant to Section 6 and carrying out or causing to be carried out all other activities relating to procurement to be made by fulfilling the procedures referred to in this Act.

(2) A Public Entity shall, in carrying out procurement related activity pursuant to Sub-section (1), carry out so through an employee who has the qualification prescribed by the Public Procurement Monitoring Office and has knowledge or training on procurement business.

(3) A Public Entity shall establish a procurement unit or assign the responsibilities thereof in order to carry out the following acts:

- (a) Preparing a procurement plan,
- (b) Preparing prequalification documents, bidding documents and procurement contract related documents by making necessary amendments in the standard bidding documents, standard prequalification documents and standard procurement contract documents prepared by the Public Procurement Monitoring Office,
- (c) Preparing documents relating to proposals for consultancy services by making necessary modification in the standard request for proposal prepared by the Public Procurement Monitoring Office,
- (d) Publicly publishing the procurement notice,
- (e) Issuing pre-qualification documents, bidding documents or

forwarding documents relating to proposals for consultancy service,

- (f) Receiving and safely keeping pre-qualification proposals, bids or consultancy service proposals,
- (g) Submitting the pre-qualification proposals, bids or consultancy service proposals to the evaluation committee for evaluation and submit the evaluated bids for acceptance,
- (h) Notifying the acceptance of the pre-qualification proposals, bids or consultancy service proposals,
- (i) Obtaining, examining and safely keeping the performance guarantee,
- (j) Examining, or causing to be examined, the quality standards of the goods, construction works or services that have been procured,
- (k) Making available the information and documents asked for by the Public Procurement Monitoring Office, and
- (l) Performing other functions as may be prescribed.

(4) In carrying out or causing to be carried out the functions as referred to in Sub-section (3), the Procurement Unit or the unit to which responsibility thereof has been assigned shall carry out the same with the approval of the chief of the concerned Public Entity.

8. Procurement Method to be Selected: (1) A Public Entity while procuring shall have to procure by applying any of the following methods based on such conditions and purchase price as prescribed:-

- (a) For procurement of goods, construction works or other services:
 - (1) By inviting open bids at international level,

- (2) By inviting open bids at national level,
- (3) By inviting sealed quotations,
- (4) By procuring directly,
- (5) Through participation of users' committee or beneficiary group,
- (6) Through force account.

(b) Procurement of consultancy service:

- (1) By requesting competitive proposals,
- (2) Through direct negotiations.

(2) In making procurement pursuant to this Act and the rules framed under this Act, procurement shall not be so made in piecemeal as to limit competition.

9. Procurement to be Made by Inviting Open Bid: Except as otherwise provided in this Act, a Public Entity making any procurement shall, to the extent possible, make by inviting open bids, and provide equal opportunity to qualified bidders to participate in such procurement process without any discrimination.

10. Qualification of Bidder or Proponent: (1) A bidder shall have to fulfill the following qualification in order to obtain a procurement contract:-

- (a) In the case of a bidder, the qualification criteria set forth in the bidding documents or where prequalification proceedings have been conducted for procurement, the qualification criteria set forth in the prequalification documents, and
- (b) In the case of a consultant the qualification criteria set forth in the documents relating to proposals.

(2) In setting forth qualification criteria pursuant to Sub-section (1) in the

bidding documents or documents relating to proposals, professional and technical qualifications, equipment availability, past performance, after-sale service arrangements, availability of spare parts, legal capacity, financial resources and condition, punishment for having committed professional offenses and similar other criteria may be set forth.

(3) In setting forth the criteria pursuant to Sub-section (2), no provision can be so made as to allow only a particular class of construction entrepreneur, supplier, consultant or service provider to participate or to prevent any particular class of construction entrepreneur, supplier, consultant or service provider from participating in the procurement process.

(4) Bids, pre-qualification proposals and consultancy service proposals shall be evaluated only in accordance with the criteria set forth in the bidding documents, pre-qualification documents and in the documents relating to proposals, respectively, and such criteria shall equally be applicable to all bidders or proponents without any discrimination.

(5) Notwithstanding anything contained elsewhere in this Section, no qualification requirements shall be prescribed for the procurement of a construction work the cost estimate of which is less than six million rupees.

(6) The Public Entity may disqualify a bidder or proponent at any time if it finds that the statement submitted by such bidder or proponent concerning the qualifications was factually false or substantially incomplete.

Provided that minor errors can be corrected by seeking information pertaining thereto from the concerned bidder or proponent.

Chapter-3

Provisions Relating to Bid

- 11. Process and Stage of Bidding:** (1) In making procurement by bidding, an invitation to bid can be made by the following process:-

(a) Inviting open bids by determining prequalification,

(b) Inviting open bids without determining prequalification.

(2) The open bid may be invited in a single stage or in two stages.

(3) In making invitation to bid on the conditions set forth in Sub-section (1) of Section 28, it may be made in two stages.

12. Prequalification to be Determined: (1) In order to procure such construction work as determined by the Public Procurement Monitoring Office from time to time to be large and complex, or to procure goods of high value such as industrial plants or with a view to identify qualified bidders, the Public Entity shall, prior to making invitation to bids, prepare prequalification documents and publicly invite to proposals for the determination of prequalification.

(2) Where the Public Entity considers appropriate, it may also determine prequalification for other procurement as well.

(3) The prequalification documents under Sub-section (1) or (2) shall set forth the qualification criteria required for prequalification and the method for the preparation of proposal and the manner for the submission of proposal.

(4) The Public Entity shall provide as prescribed the prequalification documents required to submit proposal as referred to in Sub-section (1) or (2) to all persons, firms, companies and organizations that request for such document.

(5) The selection of the qualified applicant shall be made on the basis of the qualification criteria set forth in Sub-section (3). The Public Entity shall openly publish a list of the applicants so selected and send the same to all applicants.

(6) If any applicant whose prequalification proposal is rejected, requests for the information of the reasons for the rejection of his or her proposal, within thirty days of the notice being given pursuant to Sub-section (5), the concerned

Public Entity shall have to provide such information to him or her.

(7) Other provisions relating to the terms and conditions of prequalification and determination thereof shall be as prescribed.

13. Bidding Documents to be Prepared: (1) Prior to invitation to bid, the Public Entity shall have to prepare the bidding documents.

(2) The bidding documents under Sub-section (1) shall contain the following matters:-

- (a) The nature of procurement, time required for procurement and technical specifications thereof,
- (b) Where bids are invited without carrying out prequalification, the criteria for qualification of bidders, as referred to in Section 10,
- (c) Where there is provision of site visit, information relating thereto,
- (d) If any bid conference has to be held prior to submission of bid, information relating to such conference,
- (e) Instructions for preparing and submitting bids, the place for the submission of bids, the deadline for the submission of bids and the place, date and time for the opening of bids,
- (f) Component of price, the currency or currencies in which the bid price may be stated, the currency and the source and date of the related exchange rate to be used for comparison of bids,
- (g) The criteria and methodology for the evaluation of bids and the selection of bidder,
- (h) The preferences to be given, if any, for domestic goods and local construction entrepreneurs, provision relating thereto,

- (i) Where any goods or construction works are to be procured by making separate lots and packages, such lots and packages and the manner of evaluation thereof,
- (j) Where alternatives to the technical specifications are also invited, the manner of evaluation of such alternatives,
- (k) Where a bid can be submitted even only for a portion of the goods, construction works or services to be procured, a description of such portion or portions,
- (l) The validity period of bid,
- (m) The amount, type, acceptable form and validity period of security to be furnished for bid, performance or other necessary matters,
- (n) Where a bid security is required, provision that the period of that security shall exceed by thirty days to the validity period of bid,
- (o) The terms and conditions of the procurement contract under Section 52 and the modality of coming for the entry into force of that contract,
- (p) Information that bids shall not be processed in the event of conflict of interest or information relating to legal action for fraud or corruption,
- (q) Provision that any bidder may make an application, for review, against any error or decision made by the Public Entity in carrying out bid proceedings,
- (r) Provision that the documents proving technical capacity and financial proposal (bid price) have to be submitted in one

envelope, and

- (s) Such other matters determined by the Public Procurement Monitoring Office as to be involved in the prequalification documents or bidding documents.

(3) The Public Entity shall make available the bidding documents upon collection of the charges as prescribed to any person, firm, organization or company that requests for the bidding documents in accordance with the notice for invitation to bids, and where prequalification is required to participate in the procurement proceedings, to those persons, firms, organizations or companies that have been pre-qualified and request for such documents.

14. Invitation to Bids: (1) A notice for invitation to bids or prequalification proposals shall have to be published in a daily newspaper of national circulation and, in the case of an international bid; it may also be published in any international communication media.

(2) The notice as referred to in Sub-section (1) shall be placed in the website of the concerned entity or that of the Public Procurement Monitoring Office, in the case of a central level Public Entity, and in the case of a district level Public Entity, such notice may be placed in the website of that body or that of the Public Procurement Monitoring Office.

(3) A notice on invitation to bid or prequalification proposal shall contain the following matters:-

- (a) The name and address of the Public Entity inviting bid,
- (b) The nature of and time limit for procurement work and the place of delivery of the goods to be supplied, the services to be delivered and the construction work to be performed,
- (c) If bid security is required, the amount and validity period thereof,

- (d) Where bid security is required, the amount and validity period of the bid,
- (e) The place, manner of obtaining the bidding documents or prequalification documents, and the fees charged therefor,
- (f) The place, manner, the deadline for the submission or forwarding of the bidding documents or prequalification documents,
- (g) The place, date and time for the opening of bids, and matter that the bidders or their authorized agents shall be invited to attend the opening of bid, and
- (h) Other matters as prescribed.

(4) In publishing a notice under Sub-section (1), for invitation of national level bidding or prequalification proposals, a period of at least thirty days shall be given and at least forty five days shall be given in the case of a notice on invitation that of international level bidding or prequalification proposals.

(5) While stating the place from which the bidding documents or prequalification documents can be obtained pursuant to clause (e) of Sub-section (3), provision shall have to be made for obtaining such documents from two or more than two public entities.

(6) While stating the place for submitting or forwarding the bidding documents or prequalification documents pursuant to clause (f) of Sub-section (3), provision shall be made that such documents shall be submitted or forwarded to only one Public Entity.

(7) Where any Public Entity, bidder or proponent requests for security for submitting or forwarding the bid or prequalification proposal pursuant to Sub-section (6), the concerned District Administration Office shall mandatorily make security arrangements immediately.

(8) In making procurement through an international level bidding, the Public Entity may give domestic preference to the Nepalese entrepreneurs and businesspersons as prescribed, and where domestic preference is to be so given, that matter shall be set forth in the notice on invitation to bid and the bidding documents.

Provided that, in the case of procurement of construction work, preference may be given pursuant to Sub-section (1) of Section 12 of the Construction Entrepreneur Act, 1958.

(9) A foreign bidder, while submitting bid, shall have to state whether he/she has appointed any agent in the State of Nepal or not.

(10) Where an agent is appointed pursuant to Sub-section (9), the details as prescribed in relation to the agent shall also be set forth in the bid.

(11) Notwithstanding anything contained elsewhere in this Section, where a foreign bidder enters into joint venture with a domestic construction entrepreneur, in the case of procurement of public construction work, preference may be given to such a foreign bidder.

15. International Level Bidding: (1) While making invitation to bid pursuant to this Act, an international level bid shall be invited in any of the following conditions:-

- (a) Where the goods or construction works as requisitioned by a Public Entity are not available under competitive price from more than one construction entrepreneur or supplier within the State of Nepal,
- (b) Where no bid was submitted in response to invitation to national level bidding for the procurement of goods, construction works or other services, and the same has to be procured from abroad,

- (c) Where under an agreement entered into with a donor party, foreign goods or construction works have to be procured from foreign assistance source,
- (d) Where the Public Entity has certified that the goods or construction works, being of complex and special nature, have to be procured through an international level bidding.

(2) A notice on invitation to international bidding as referred to in this Section shall be published in English language; and all bidding or prequalification documents shall have to be made available in the English language.

(3) The notice referred to in Sub-section (2) shall have to be placed in the website referred to in Sub-section (2) of Section 14.

16. Clarification as to Unclear Matter on Bidding or Prequalification

Documents:(1) Where any bidder, being unclear about any matter set forth in the bidding documents or the prequalification documents, requests, within the time period set out in such documents, for a clarification, the Public Entity shall have to communicate the information of such matter to all bidders prior to the deadline for the submission of bids or prequalification proposals.

(2) Where the Public Entity makes any alteration/modification in the information under Sub-section (1) and the bidding documents or prequalification documents, it shall have to communicate information relating to such alteration/modification to all bidders that have participated in the procurement proceedings within a reasonable time so as to enable them to take such alteration/modification into account in submitting their bids or preparing their proposals for prequalification.

(3) Where it is necessary to provide additional time to bidders for the act under Sub-section (2), the Public Entity may extend the deadline for the

submission of bids or prequalification proposals.

17. Deadline for Submission of Bids or Prequalification Proposals: The Public Entity shall have to so set the deadline for the submission of bids or prequalification proposals as not to be less than the period set forth in Sub-section (4) of Section 14 and as to allow sufficient time for bidders to prepare or submit such bids or proposals.

18. Method of Submission of Bids: (1) A bid shall have to be submitted in the specified form, duly signed by the bidder himself /herself or his /her authorized agent, in a sealed envelope by the bidder himself /herself or through his or her authorized agent or by post or courier at such place and within the last date and time as specified for the submission of bids.

(2) Bids received after the deadline under Sub-section (1) shall not be processed and such bid shall be returned unopened to the concerned bidder.

19. Withdrawal and Modification of Bid: (1) A bidder may, prior to expiry of the deadline for the submission of bids, make a sealed application for modification to or withdrawal of bid that a bidder has once submitted.

(2) Other provisions relating to the withdrawal or modification of bid shall be as prescribed.

20. Validity Period of Bid: (1) The validity period of a bid shall be as specified in the bidding documents.

(2) The period as referred to in Sub-section (1) shall commence from the deadline for the submission of bids.

(3) Notwithstanding anything contained in Sub-section (1), the Public Entity may, if so required to extend the validity period of bids after the opening of bids, extend the validity period of bids as required assigning the reasons for the same.

(4) In extending the validity period of bid pursuant to Sub-section (3), consent of the concerned bidder shall have to be obtained.

(5) A bidder who agrees to extend the validity period of his/her/its bid pursuant to Sub-section (4) shall correspondingly extend the validity period of bid security.

(6) The bid security of the bidder not providing consent pursuant to Sub-section (4) shall be returned.

21. Bid Security: (1) A bidder shall provide as prescribed bid security along with the bid.

(2) The security furnished pursuant to Sub-section (1) shall be forfeited in the following conditions:-

- (a) If the bidder requests for modification or withdrawal of bid during the validity period of bid, after the deadline for the submission of bids,
- (b) If the bidder refuses to accept the correction of arithmetical errors found in the bid,
- (c) If the selected bidder fails to sign the procurement contract in accordance with the terms and conditions set forth in the bidding documents,
- (d) Where the bidder fails to furnish the performance security as set forth in the bidding documents within the time for signing the procurement contract,
- (e) If the bidder has changed the bid price or substantive matter of the bid while providing any information in response to clarification sought by the Public Entity pursuant to Sub-section (4) of Section 23 in the course of examination of bids.

(f) If any act contrary to conduct as referred to in Section 62 is committed.

(3) After the conclusion of a procurement contract under Section 52, the Public Entity shall return the bid security of the bidder who has signed the procurement contract and the bid security of those bidders whose bid security is not liable to forfeiture pursuant to Sub-section (2).

22. Opening of Bids: The Public Entity shall have to open bids as prescribed at the time and place specified in the bidding documents on the same day immediately after expiry of the deadline for the submission of bids.

23. Examination of Bids: (1) The Public Entity shall have to submit to the evaluation committee the bids opened pursuant to Section 22.

(2) The committee shall, prior to evaluating the bids submitted pursuant to Sub-section (1), examine the bids in order to ascertain the following matters:-

(a) Whether documents establishing that the bidder is qualified under law to submit the bid are submitted or not,

(b) Whether the bid is complete in accordance with the instructions to bidders set forth in the bidding documents or not and whether it is signed by the bidder or by the bidder's authorized agent or not,

(c) Where a bid security is required to be submitted along with the bid, whether a bid security of such type, period and amount as set forth in the bidding documents is accompanied with the bid or not,

(d) Whether the bid is substantially responsive to the technical specifications set forth in the bidding documents and the terms and conditions of procurement contract attached with the bidding documents or not.

(3) In examining the completeness of bids pursuant to clause (b) of Sub-section (2), the following matters shall be examined:-

- (a) Whether a power of attorney for the authorized agent or local agent of the bidder is submitted or not,
- (b) Where a joint venture agreement is necessary, whether such agreement is submitted or not,
- (c) Whether documents establishing the eligibility of the bidder and of goods mentioned by the bidder are submitted or not,
- (d) Whether necessary document relating to the qualifications of the bidder is submitted or not,
- (e) Where the bidding documents require the submission of a rate analysis, whether such rate analysis is submitted or not,
- (f) Other matters as prescribed.

(4) The Public Entity may, in the course of examining the bids pursuant to this Section, ask bidders for necessary information.

(5) The concerned bidder shall have to provide the information sought by the Public Entity pursuant to Sub-section (4) to the Public Entity, and in providing such information, no change or alteration in the bid price or other substance of the bid shall be allowed.

(6) In examining bids invited after determination of prequalification, examination of the qualification of bidder shall be made to ascertain whether or not it conforms to the prequalification or not.

(7) While examining the qualification pursuant to Sub-section (6), if the qualification of a bidder is found to be substantially lower than what was at the prequalification stage, the bid of such a bidder shall be rejected.

(8) If any arithmetical error is found in a bid in examining bids pursuant

to this Section, the Public Entity may correct such an error, and where, in making such correction, there exists a discrepancy between unit rate and total amount, the unit rate shall prevail, and the total amount shall be corrected as per the same rate.

(9) Where there is a discrepancy between figures and words in a bid submitted by a bidder, the amount in words shall prevail.

(10) Where any error is corrected pursuant to Sub-section (8) or (9), information of such correction shall be communicated to the concerned bidder.

24. Non-procession of Bids: Bids having following noncompliance shall not be processed:

- (a) Where it is not sealed,
- (b) Where it is not submitted within the time frame,
- (c) The bids withdrawn pursuant to Section 19,
- (d) If it is not in accordance with Sub-section (2) of Section 23,
- (e) The bids submitted by mutual collusion pursuant to Sub-section (6) of Section 26,
- (f) The bids cancelled pursuant to Sub-section (7) of Section 23.

25. Evaluation of Bids: (1) All submitted bids other than those separated for non-procession pursuant to Section 24, shall be included for evaluation.

(2) Where a bid is found containing minor deviations in the matters such as the technical specifications, descriptions and characteristics etc. so as not to reject the bid, the value of such deviations shall be quantified, to the extent possible, and included in the evaluation of bids pursuant to Sub-section (1).

(3) Where the value of minor deviations under Sub-section (2) exceeds fifteen percent of the bid price of the bidder, such a bid shall be deemed to be substantially non-responsive; and shall be excluded from evaluation.

Explanation: For the purposes of this Section, the words “minor deviations” mean such deviations that do not materially depart from the matters such as the technical specifications and descriptions as set forth in the bidding documents.

(4) Where invitation to bid has been made after determination of prequalification, the bids submitted by the bidder other than the pre-qualified bidders shall be excluded from evaluation under Sub-section (1).

(5) Bid shall be evaluated in accordance with the criteria and methodology set forth in the bidding documents; and in carrying out such evaluation, the bid with the lowest bid price shall be determined by making comparison of the evaluated price of every bid with the evaluated price of the other bids.

(6) The qualifications of the bidder of the bid having the lowest bid price under Sub-section (4) shall be verified in order to ascertain whether it conforms to the qualification criteria set forth in the bidding documents or not.

(7) Where on examination, the qualification of the bidder of the bid having the lowest bid price pursuant to Sub-section (4) is in conformity with the qualification evaluation criteria set forth in the bidding documents under Sub-section (5), such bid shall be the lowest evaluated substantively responsive bid. Where, on examination, the qualification of such bidder is found not to be in conformity with the qualification as evaluation criteria set forth in the bidding documents, such bid shall be excluded from evaluation; and the qualification of the next bidder having the next lowest bid price shall be examined on the same grounds respectively.

(8) The evaluation committee shall prepare an evaluation report stating, *inter alia*, the criteria and methodology of evaluation of the lowest evaluated substantially responsive bid pursuant to Sub-section (6) and submit the report to

the Public Entity.

26. **Rejection of Bids or Cancellation of Procurement Proceedings:** (1) The Public Entity may, in the following circumstances, reject all bids or cancel the procurement proceedings:-

- (a) If none of the bids are substantially responsive pursuant to clause (d) of Sub-section (2) of Section 23,
- (b) If the bid price of the lowest evaluated substantially responsive bid is substantially above the cost estimate, or
- (c) If requisitioned goods, construction works, consultancy services or other services are no longer required.

(2) Notwithstanding anything contained in Sub-section (1), no bid shall be rejected or re-bidding shall be invited only for the reason that only a few bids are or only one bid is substantively responsive.

(3) The Public Entity shall have to communicate to all the bidders a notice along with the reason for the rejection of bids or cancellation of the procurement proceedings pursuant to Sub-section (1).

(4) Where any bidder requests, within thirty days of the communication of notice pursuant to Sub-section (3), for grounds for the rejection of all bids or rejection of the procurement proceedings, the Public Entity shall have to communicate such information to that bidder.

(5) In making re-invitation to bid because of non-submission of any bid in response to an invitation to bid or cancellation of all bids or cancellation of the bid proceedings pursuant to Sub-section (1), the modification shall also be carry out in the bidding documents, technical specifications, cost estimate and terms and conditions of procurement contract as per necessity by reviewing the reasons for such rejection of bids or cancellation of the bid proceedings

(6) Notwithstanding anything contained elsewhere in this Section, if is proved that the bidder has submitted bid by collusion among the bidders, such bid shall be rejected.

27. Acceptance of Bid and Procurement Contract: (1) The Public Entity shall select for acceptance only the lowest evaluated substantially responsive bid in accordance with Section 25.

(2) Within seven days of the selection of the bid pursuant to Sub-section (1), the Public Entity shall serve a notice of the intent of acceptance of his or her bid to the concerned bidder. Information regarding the name, address of the bidder whose bid has been so selected and the price of the bid shall also be communicated to the other bidders.

(3) If no bidder makes an application pursuant to Section 47 within a period of seven days of providing the notice under Sub-section (2), the bid of the bidder selected pursuant to Sub-section (1) shall be accepted and a notice shall be communicated to the bidder to furnish the performance security to conclude the procurement contract within fifteen days.

(4) The concerned bidder shall have to furnish the performance security and sign the procurement contract under Section 52 within the period set forth in Sub-section (3).

(5) If the bidder fails to furnish the performance security and sign the procurement contract within the period under Sub-section (3), the bid security of that bidder shall be forfeited, and the bid of the other immediately next lowest evaluated substantially responsive bidder shall be accepted and the procurement contract concluded.

(6) If even the bidder under Sub-section (5) fails to furnish the performance security and sign the procurement contract, the bid of the other immediately next lowest evaluated substantially responsive bidder,

respectively, shall be accepted, and a notice shall be served to that bidder for concluding the procurement contract pursuant to this Section.

(7) If, within thirty days of the communication of the notice as referred to in Sub-section (2), any bidder whose bid has been rejected requests for grounds for the rejection of its bid, the Public Entity shall have to communicate such information to that bidder.

28. Two-Stage Bidding: (1) Two-stage bidding may be invited in the following conditions:-

- (a) When it is not feasible to define fully the technical aspects of the goods or construction works or services to be procured or the terms and conditions of the procurement contract at the time of the invitation to bid, or
- (b) Because of the complex nature of the goods or construction works or services to be procured, if it is necessary for the Public Entity to discuss with the bidders about how to resolve the problems related to various technical aspects or the procurement contract and about such technical aspects and conditions of contract and benefits accruing there from.

(2) While inviting the first stage bid pursuant to this Section, the bidding documents shall state the purpose of procurement, expected performance, broad specifications and other broad features and the qualification of bidders, and state that bidder shall not be required to quote the price in his/her bid and shall submit only technical proposal and comments on the terms and conditions of the proposed procurement contract.

(3) The Public Entity may hold discussions with any or all bidders in relation to the bids submitted in response to the invitation to bid made pursuant to Sub-section (2).

(4) The Public Entity may, also taking into account the discussions held in pursuance to Sub-section (3), do the following in relation to the bids submitted pursuant to Sub-section (2):

- (a) Canceling a proposal relating to a bid that fails to meet the basic requirements required to be met in relation to procurement or fails to make minimum performance or fails to complete the work within the specified period or that cannot be modified to meet such requirements or to make such performance or to complete the work within the specified period or due to any other weakness,
- (b) Modifying or improving the technical specifications, evaluation criteria and terms and conditions of the procurement contract in order to increase competition,
- (c) Determining the evaluation system in order to determine the appropriateness of various options submitted by the bidders.

(5) After the completion of the acts as referred to in Sub-section (4), the Public Entity shall make invitation to second stage bid. In making such invitation to bid, the bidders whose bids have not been cancelled pursuant to the said Sub-section shall be invited to submit bid along with price in accordance with revised bidding documents.

(6) The second-stage bidding proceedings to be carried out pursuant to Sub-section (5) shall be carried out pursuant to the provisions contained in this Chapter except for those provided for in this Section.

Chapter-4

Provisions Relating to Consultancy Services

29. **Consultancy Services May be Procured:** (1) A Public Entity may procure consultancy services from any person, firm, organization or company in the

following conditions:-

- (a) If any work cannot be performed by the human resource available at the concerned Public Entity, or
- (b) If a service is required to be obtained from a consultant under the foreign aid source in accordance with an agreement with a donor party.

(2) In procuring the consultancy services under Sub-section (1), procurement shall be made by fulfilling the procedures referred to in this Act.

30. Short List to be Prepared by Soliciting Expression of Interest Openly: (1)

Where it is required to procure consultancy service that costs more than the prescribed threshold, the Public Entity, in order to solicit expression of interest from the persons, firms, organizations or companies that are interested in providing such consultancy services shall publish a notice in a newspaper of national circulation, giving a period of at least fifteen days, setting out the matters as prescribed.

(2) The notice under Sub-section (1) may be placed in the website of the concerned Ministry of the Public Entity or of the Public Procurement Monitoring Office.

(3) International level expression of interest shall have to be invited in the following circumstances:-

- (a) To procure consultancy service, the cost of which exceeds the prescribed threshold,
- (b) If the consultancy service as requisitioned by the Public Entity is not available under competitive price from more than one consultant within the State of Nepal,
- (c) If no proposal has been submitted in response to invitation to

national level proposal for the procurement of consultancy service, and the service has to be procured from any foreign consultant,

- (d) If it is necessary to obtain services from a consultant under the foreign aid source by soliciting international expression of interest in accordance with an agreement with the donor party.

(4) While soliciting expression of interest under Sub-section (3), notice shall have to be published in English language.

(5) The Public Entity shall, upon evaluation, *inter alia*, of the qualification, experience and capacity of the intending proponents the expression of interest pursuant to Sub-section (1) or (3), make selection of generally three to six intending proponents and who can provide such consultancy service, and prepare a short list as prescribed.

(6) Where it is required to procure consultancy service the cost of which is less than the prescribed threshold, the Public Entity may prepare a list of the person, firm, organization or company that can provide such service, by fulfilling the procedures as prescribed, and shall solicit proposals pursuant to Section 31 from the person, firm, organization or company that have been included in that list, by fulfilling the procedures as prescribed.

31. Soliciting Proposals: (1) After a short list has been prepared pursuant to Section 30, the Public Entity shall request for proposals from intending proponents, by giving a period of at least thirty days, sending the documents relating to proposal, as prescribed to the intending proponents who are short listed.

(2) The documents relating to proposal under in Sub-section (1) shall contain the following matters:-

- (a) The name and address of the Public Entity,

- (b) The nature of the services to be procured, the time and place when and where the services are to be provided, the terms of reference of the services, the task to be completed and expected outputs,
- (c) Instructions to proponent to prepare proposal,
- (d) Matters that the technical and the financial proposals have to be sealed in separate envelopes, each of which has to clearly indicate the type of proposal outside it and that both envelopes have then to be sealed in a separate envelope and that the required services have to be mentioned thereon,
- (e) Technical and financial evaluation weightage,
- (f) The criteria and weightage marks for the evaluation and comparison of proposal,
- (g) Conditions of the procurement contract,
- (h) The place, date and time for the submission of proposals,
- (i) Method for the selection of proposals,
- (j) Statement that proposals shall not be processed in the event of conflict of interest and information relating to legal action if fraud or corruption is committed,
- (k) Provision that a proponent may make an application for review, against any error or decision made by the Public Entity in carrying out proposal proceedings, and
- (l) Other matters as prescribed.

(3) In setting forth in the documents relating to proposals under Sub-section (1), the criteria for the evaluation of proposal pursuant to clause (f) of Sub-section (2), any or all of the following criteria shall be set forth as required

for the evaluation of technical proposal:-

- (a) Experience of consultants in the task to be performed by consultants,
- (b) The quality of proposed methodology for the performance of task by the consultants,
- (c) The qualification of the proposed key human resource,
- (d) Provision of knowledge and technology transfer,
- (e) In the case of international level proposals, the details of key Nepalese human resource proposed for the performance of task.

(4) In setting forth in the documents relating to proposals under Sub-section (1), the method for the selection of proposal pursuant to clause (i) of Sub-section (2), there shall be set forth which of the following methods shall be used for the selection of proposals:-

- (a) Quality and cost method,
- (b) Quality method,
- (c) Fixed Budget method, or
- (d) Least cost method.

(5) Notwithstanding anything contained in Sub-section (4), where the nature of the consultancy services to be procured is exceptionally complex or such services are likely to have considerable impact on future projects or national economy, the selection of proposals may be made exclusively on the basis of the quality method, as prescribed.

32. Opening of Proposals: (1) After the expiry of the deadline for the submission of proposal, the outer envelope of the proposal received from the proponent shall be opened and the sealed envelope of technical and financial proposal

shall be separated.

(2) Out of the envelope separated pursuant to Sub-section (1), the technical proposals shall be opened first, and the envelope of financial proposal shall be kept safely apart unopened.

(3) The envelope of financial proposal separated pursuant to Sub-section (2) shall be opened only after making evaluation of the technical proposal pursuant to Section 33.

(4) Other provision relating to the opening of technical proposals shall be as prescribed.

33. Evaluation of Technical Proposal: The technical proposal shall be evaluated in accordance with the evaluation criteria as prescribed in the documents relating to proposal.

34. Opening of Financial Proposal: The financial proposals of only those proponents who have been qualified from the evaluation of technical proposals shall be opened as prescribed.

35. Evaluation of Financial Proposal: The financial proposal opened pursuant to Section 34 shall be evaluated as provided hereunder:-

(a) Where quality and cost method is applied to select the proposal, the technical and financial proposals shall be evaluated in a combined form and the proposal of the proponent who obtains the highest marks in such evaluation shall have to be selected as prescribed.

(b) Where quality method is applied to select proposal, only the proposal of the proponent obtaining the highest marks in the technical proposal shall have to be selected.

(c) Where fixed budget method is applied to select proposal, a

proposal having cost above such budget ceiling shall be rejected and the proposal of the proponent who obtains the highest technical marks after falling within such budget ceiling shall have to be selected.

- (d) Where least cost method is applied to select proposal, the proposal of a proponent having the lowest cost out of the proponents having obtained minimum marks prescribed for being successful in the technical proposal shall have to be selected.

36. Rejection of Proposal and Cancellation of Procurement Proceedings: (1)

The Public Entity may reject all proposals or cancel the procurement proceedings in the following conditions:-

- (a) If all the received proposals are not substantially responsive to the terms of reference,
- (b) If the cost offered by the selected proponent is substantially more than the cost estimate and available budget,
- (c) If the consultancy service is no longer required or,
- (d) If it is proved that the proponents have submitted the proposal by mutual collusions.

Provided that the proposal of those proponents who have not colluded may be processed.

37. Negotiations with the Proponent: (1) Negotiations with the proponent selected pursuant to Section 35 may be held in the matter of terms of reference and scope of the proposed services, progress report, and facility to be made available by the Public Entity.

- (2) Except in the conditions under clause (b) of Sub-section (1) of

Section 35, negotiations in relation to the financial proposal cannot be held with respect to the remuneration of professional experts.

Provided that negotiations may be held with respect to the reimbursable expenditure.

(3) If an agreement acceptable to both the Public Entity and the proponent could not be resulted from the negotiations held pursuant to this Section, the Public Entity shall have to negotiate in the case of the proposal under clause (a) (b) and (c) of Sub-section (1) of Section 35, with the proponent having obtained the next highest marks and in the case of the proposal under clause (d), with the proponent having the next lowest cost, respectively.

38. Procurement Contract to be Concluded: (1) The proposal of the proponent who has reached to the agreement from the negotiations pursuant to Section 37 shall be selected for acceptance.

(2) Within seven days of selection of proposal pursuant to Sub-section (1), the Public Entity shall have to serve a notice of the intention of accepting the proposal to the proponent so selected and to other short-listed proponents.

(3) If no proponent files an application pursuant to Section 47 within seven days of a notice being served pursuant to Sub-section (2), the proposal of the proponent selected pursuant to Sub-section (1) shall be accepted and s/he shall be served a notice by giving a period of fifteen days to come to sign the contract.

(4) If the proponent attends within the period under Sub-section (1) to conclude contract, s/he shall have to sign contract under Section 52, and if s/he does not attend, the Public Entity shall hold negotiations, respectively, pursuant to Section 37 with the proponent having obtained next higher marks in the case of a proponent under clause (a), (b), and (c) of Sub-section (1) of Section 35 and with the next proponent having the lowest cost in the case of clause (d) and

conclude contract with such proponent pursuant to Section 52.

39. **Other Provision for Consultancy Services:** Other procedure concerning procurement of consultancy service and evaluation process thereof shall be as prescribed.

Chapter-5

Other Provision Relating to Procurement

40. **Provision Relating to Sealed Quotation:** (1) The threshold of the amount of the goods, construction work or other services that can be procured through sealed quotation shall be as prescribed.

(2) Before inviting a sealed quotation, a form of sealed quotation stating clearly therein the specifications, quality, quantity terms and conditions of supply and time and other necessary matters of the goods, construction work or other services to be procured shall have to be prepared.

(3) In inviting a sealed quotation, a notice shall be published in a national or local level newspaper by giving a period at least of fifteen days.

(4) The sealed quotation, once submitted, cannot be withdrawn or amended.

(5) The lowest evaluated sealed quotation falling within the cost estimate after fulfilling the terms and conditions under Sub-section (2) shall have to be approved.

(6) Other provisions of sealed quotation shall be as prescribed.

41. **Provision for Direct Procurement:** (1) Notwithstanding anything contained elsewhere in this Act, goods or consultancy services or other services may be directly procured or construction work may be caused to be carried out directly in the following conditions:-

(a) Low-value procurement valuing up to the prescribed amount,

- (b) If only one supplier or construction entrepreneur or consultant or service provider has the technical efficiency or capacity to fulfill the procurement requirement,
- (c) If only one supplier has the exclusive right to supply the goods to be procured and no other appropriate alternative is available,
- (d) If additional goods or services of proprietary nature within the prescribed limit is to be procured from the existing supplier or consultant or service provider after it has been proved that if the existing supplier or consultant or service provider is changed to replace or extend existing goods or services or the spare parts of the installed machine the goods or services existing in the Public Entity can not be replaced or changed,
- (e) If the most necessary construction works, goods or consultancy services or other services within the limit as prescribed but not included in the initial contract due to failure to foresee and difficult to be completed by separating from the initial contract due to technical or financial reasons, is to be procured.
- (f) If the service of a particular consultant with his unique qualifications is immediately needed for the concerned work or where the service of same consultant is indispensable.

(2) Notwithstanding anything contained elsewhere in this Section, procurement to be made pursuant to clause (b), (e) and (f) shall be made in the case of the Public Entity under sub-clause (1) of clause (b) of Section 2 as per the decision of Government of Nepal, Council of Ministers, on recommendation

of the following committee and in the case of other Public Entity as per the decision of the supreme executive body of that entity:-

- | | |
|---|-------------|
| (a) Chief Secretary, Government of Nepal | Coordinator |
| (b) Secretary, Ministry of Finance | -Member |
| (c) Secretary, Concerned Ministry | -Member |
| (d) Financial Comptroller General | -Member |
| (e) Chief, Public Procurement Monitoring Office | -Member |

(3) For the direct procurement pursuant to Sub-section (1), the Public Entity shall invite written rate or proposal from only one supplier or construction entrepreneur or consultant or service provider after preparing a written description as prescribed of the special matter concerning its requirements and quality, quantity, terms and conditions and time of supply and may procure by holding negotiations according to necessity.

Provided that such procurement shall be made only after obtaining prior approval where an approval is required under this Act and by concluding a contract.

42. Special Provision Relating to Ration Procurement : (1) Notwithstanding anything contained elsewhere in this Act, the Public Entity in procuring ration, shall have to apply the procedure as prescribed in the following matters:-

- (a) Cost estimate and approval thereof,
- (b) Price-escalation,
- (c) Bidder's eligibility,
- (d) Bid security,
- (e) Submission of bid, and
- (f) Other matter as prescribed.

(2) Procedures other than those mentioned in Sub-section (1) shall be as provided for in this Act.

43. **Provision Relating to Renting House and Land and Obtaining Service on Contract:** Notwithstanding anything contained elsewhere in this Act, the Public Entity may take house and land on rent or obtain the prescribed services on contract in compliance with the prescribed procedure.

44. **Construction Works May be Caused to be Carried out by Users Committee or Beneficiary Community:** If economy, quality or sustainability is increased in having a construction work carried out or obtaining services related thereto from the users committee or beneficiary community or if the main objective of the project is to create employment and to have the beneficiary community involved, such work may be caused to be carried by or such service may be obtained from a users' committee or beneficiary community by fulfilling the procedure as prescribed.

45. **Works May be Done or Cause to be Done by Force Account:** (1) Such work as repair and maintenance of ordinary nature, regular petty work or sanitation may be done by force account or caused to be done by a users' committee.

(2) The procedure to be applied for carrying out or causing to be carried out the work pursuant to Sub-section (1) shall be as prescribed.

46. **Work May be Caused to be Carried Out by Non-Governmental Organization:** (1) If promptness, effectiveness and economy are achieved in having works such as public awareness training, orientation, empowerment, main-streaming carried out by a non-governmental organization, the Public Entity may have such work carried out or obtain such services from a non-governmental organization by application of the process as prescribed.

Chapter-6

Provision Relating to Review of Procurement Proceedings or Decision

47. **Application may be Filed before the Chief of Public Entity:** (1) A bidder or proponent may file an application before the chief of the concerned Public Entity for review against any error or decision made by the Public Entity stating the cause for the damages the bidder will suffer or is likely to suffer from the error or breach of the duty, imposed on the Public Entity in carrying out the procurement proceedings or making decision.

(2) The application to be filed pursuant to Sub-section (1) shall be limited with respect only to the proceedings prior to entry into force of the procurement contract.

(3) The application under Sub-section (1) shall have to be filed within the period specified, if any, in this Act for making application and, if not so specified, within seven days from the date of the bidder or proponent having become aware of that the Public Entity has made an error or has dishonored the duty relating to the procurement proceedings.

(4) In the application under Sub-section (1), the applicant shall have to state clearly the commission or omission of an act by the Public Entity that led to such error or breach of duty and the provision of this Act or Regulations or guidelines made thereunder that have been contravened by such decision.

(5) An application for review received after the expiry of the period under Sub-section (3) shall not be processed.

(6) If, from the inquiry made in respect of the application received pursuant to Sub-section (1), an error is found in the procurement proceedings or the Public Entity is found to have breached its duty or such decision is found to be contrary to law, the chief of the Public Entity shall suspend the procurement proceedings and make a decision with reason in writing within five days of

receipt of such application.

(7) The decision under Sub-section (6) shall also state how the procurement proceedings shall further proceed on.

(8) If the application under Sub-section (1) is in respect of the procurement proceedings of an amount below the prescribed one, no application can be submitted before the Review Committee for review against the decision made by the chief of the Public Entity pursuant to Sub-section (6).

48. Review Committee: (1) For review of the application under Section 49, government of Nepal shall constitute a public procurement Review Committee consisting of the following chairperson and member:-

- (a) One person from among the former judges of the Appellate Court or Judge of the Appellate Court or the persons retired from the special class post of Government of Nepal. -Chairperson
- (b) One person from among the persons retired from the gazetted first class post of the Nepal Engineering Service of the Government of Nepal -Member
- (c) One person from among the persons having experiences and expertise on public procurement -Member

(2) While making appointment of a member under clause (c) of Sub-section (1), no employee, currently holding a post in a Public Entity shall be appointed.

(3) The tenure of the chairperson or member appointed pursuant to Sub-section (1) shall be three years.

Provided that in appointing the members for the first time, one member

shall be appointed for one year and the other member shall be appointed for two years.

(4) The tenure of the chairperson or member under Sub-section (1) may be extended up to another one term.

(5) The terms and conditions of the service and remuneration and facilities of the chairperson or member under Sub-section (1) shall be as specified by the Government of Nepal.

(6) Before assuming the office, the chairperson or member under Sub-section (1) shall have to submit the information of the details as prescribed to the Government of Nepal through the Public Procurement Monitoring Office.

(7) Government of Nepal may remove the chairperson or member in the following conditions:-

- (a) If s/he commits misconduct,
- (b) If s/he fails to discharge the functions and duties as per the responsibility of the post due to lack of performance capacity or skill, or
- (c) If s/he is convicted guilty from a court of law in a criminal offense of moral turpitude.

49. Application May be Filed Before the Review Committee: A bidder or proponent may file an application for review before the Review Committee in the following conditions:-

- (a) If the chief of the Public Entity does not make a decision on the application filed before the Public Entity pursuant to Section 47 in respect of the procurement proceedings of the amount above the prescribed threshold within the period as referred to in Sub-section (6) of the same Section or if the

applicant is dissatisfied with the decision made by him/her,

- (b) In the matter of the procurement contract concluded pursuant to Section 52.

50. Method of Review: (1) A bidder or consultant filing an application for review under Section 48 before the Review Committee shall have to file such application in the case of clause (a) of Section 49 within seven days and in the case of clause (b) of the same Section within a period of thirty days from the date of conclusion of such contract.

(2) Within three days of the receipt of application pursuant to Sub-section (1), the Review Committee shall notify, by transmitting a copy of such application and document attached to such application, if any, to the concerned Public Entity to provide the information about the action taken in that respect and comments thereon.

(3) Within three days of the receipt of notice pursuant to Sub-section (2), the Public Entity shall have to provide to the Review Committee with information and comments related thereto.

(4) The Review Committee shall have to make decision within thirty days of receipt of the application pursuant to Sub-section (1) on the basis of the information and comments received pursuant to Sub-section (3), the evidence submitted by the applicant along with the application and, if necessary, by hearing both the parties.

(5) In making a decision pursuant to Sub-section (4), the Review Committee may decide as follows:-

- (a) Dismissing the application,
- (b) In the cases where procurement contract has not been concluded,-

- (1) Giving an order to the Public Entity not to commit or make an unauthorized act or decision or to pursue incorrect procedure,
- (2) Annulling the whole or in part an unauthorized act or decision made by the Public Entity,
- (3) If bids or proposals need to be re-evaluated due to occurrence of error in its evaluation, issuing an order for re-evaluation, citing such error as well, if any, in the evaluation.

(c) Where a procurement contract has already been concluded if the Review Committee considers that such contract should have been awarded to the applicant, recommending to the Public Entity to pay a reasonable amount (quantum merit) to the applicant having regard to the grievances suffered by the applicant.

(6) An applicant filing application for review pursuant to this Section shall have to deposit security as prescribed.

(7) In cases where an application is dismissed pursuant to clause (a) of Sub-section (5), such security shall be forfeited.

51. Procurement Proceedings to be Withheld: (1) Upon receipt of the notice of the application for review filed pursuant to Sub-section (1) of Section 50, the Public Entity shall have to withhold procurement proceedings until the Review Committee makes a decision in respect of such application.

(2) Notwithstanding anything contained in Sub-section (1), procurement proceedings need not be stopped in the following conditions:-

(a) If the Public Entity informs the Review Committee certifying the matter that there is an urgency to keep the procurement

proceedings continuing due to an important public interest lying in the procurement proceedings, or

- (b) If the Review Committee fails to make a decision within the period under Sub-section (4) of Section 50,
- (c) Where the procurement contract has been concluded.

(3) If the Public Entity does not withhold the procurement proceedings pursuant to clause (a) and (b) of Sub-section (2), it shall have to give information thereof to the Review Committee.

Chapter-7

Provision Relating to Procurement contract

52. Procurement Contract and Terms and Conditions Thereof: (1) In making procurement other than of low-value one, in accordance with this Act, the Public Entity shall have to conclude a procurement contract in accordance to this Section.

(2) The procurement contract under Sub-section (1) shall include the terms and conditions as referred to in the bidding documents, documents relating to proposal and documents relating to sealed quotation and such terms and conditions may, according to the nature of the contract be the following:-

- (a) Name and address, telephone, fax number of the parties to the procurement contract and their contact person for implementation of the contract,
- (b) Scope of the procurement contract,
- (c) Details of the documents included in the procurement contract and their priority order,
- (d) Work performance schedule,
- (e) Supply time, performance time or whether time can be

extended or not,

- (f) Procurement contract amount or procedure of determining it,
- (g) Terms and conditions for acceptance of goods, construction work or services,
- (h) Terms and conditions and mode of payment including payment in advance, payment of foreign currency,
- (i) *Force majeure*,
- (j) If price adjustment can be made, provision thereof,
- (k) If procurement contract can be amended and variation order can be issued, provision thereof,
- (l) If insurance is necessary, provision relating thereto,
- (m) Security required,
- (n) Liquidated damages for failure of performance within the stipulated time,
- (o) Provision concerning bonus to be given if work is completed before the stipulated period,
- (p) Conditions in which procurement contract may be terminated,
- (q) Provision whether sub-contract can be concluded or not,
- (r) Mechanism for settlement of disputes,
- (s) Applicable law, and
- (t) Other matters as prescribed.

53. Amendment to Procurement Contract: Unless otherwise provide for in procurement contract, a procurement contract may be amended by written consent of both the parties subject to non-alteration of the basic nature or scope

of the work.

Provided that procurement contract need not be amended in issuing a variation order pursuant to Section 54 or making price adjustment pursuant to Section 55.

54. Variation Order: (1) Unless otherwise provided for in the procurement contract, if the circumstances that could not be foreseen at the time of signing of procurement contract arise in the course of implementation of the procurement contract, the competent authority may, by stating clear reasons thereof, issue as prescribed, a variation order for a variation of up to fifteen percent and for a variation order above it, a variation order may be issued as per the decision made by the Government of Nepal Council of Ministers by complying with the procedure as prescribed in the case of the Public Entity under sub-clause (1) of clause (b) of Section 2 and in the case of other Public Entity as decided by the supreme executive body of such entity.

(2) The variation order under Sub-section (1) shall be issued in the following manner:-

- (a) To be so issued as not to change the basic nature or scope of the concerned work,
- (b) There must have been made arrangements for budget and,
- (c) Approval of the competent authority must have been obtained.

(3) Other provision concerning the issuance of variation order shall be as prescribed.

55. Price Adjustment in Procurement Contract: (1) Unless otherwise provided in procurement contract, if price needs to be adjusted in the course of implementation of a procurement contract having duration exceeding fifteen months the competent authority may adjust price.

Provided that where a procurement contract has been concluded to procure a public construction work following the invitation of national level bidding and the price of any construction materials is increased or decreased unexpectedly by more than ten percent of the previous price, price shall be adjusted as prescribed by deducting ten percent in the amount so increased or decreased.

(2) Notwithstanding anything contained in Sub-section (1), price adjustment cannot be made where the work under the contract is not completed within the period prescribed in such contract and has taken more time due to the delay by the person who has obtained procurement contract or if procurement contract is concluded on the basis of lump sum contract or fixed budget.

56. Provision Concerning Extension of Contract Period: (1) Provisions concerning the extension of period of procurement contract shall be as provided in the concerned procurement contract.

(2) Notwithstanding anything contained in Sub-section (1), if the period of procurement contract is to be inevitably extended due to *force majeure*, failure of the Public Entity to make available the materials to be made available by it or other reasonable causes, the competent authority may extend the period on the prescribed grounds upon submission of application by the person obtaining procurement contract.

57. Payment of Bill or Invoice: Subject to the procurement contract, the Public Entity shall have to make payment of the bill/invoice as prescribed

58. Mechanism for Dispute Settlement: (1) Any dispute arising between the Public Entity and the construction entrepreneur, supplier, service provider or consultant in connection with the implementation of the procurement contract shall be settled amicably.

(2) A procurement contract may provide the mechanism for resolution of disputes that could not be settled amicably in accordance with Sub-section (1).

(3) In providing mechanism for resolution pursuant to Sub-section (2), the procurement contract may provide that any dispute relating to supply of goods, consultancy service and other services shall be resolved through arbitration in accordance with the procedure provided for, if any, in the procurement contract and, if not provided for, in accordance with the prevailing law.

(4) In providing mechanism pursuant to Sub-section (2), the procurement contract may provide that disputes relating to construction work shall be resolved as follows:-

- (a) By an adjudicator for an amount, as prescribed,
- (b) By a three-member dispute resolution committee, in the case of amount exceeding that of clause (a).
- (c) The provision that if a person is not satisfied with the decision made under clause (a) or (b), such dispute shall be resolved through arbitration pursuant to prevailing law.

(5) The appointment of adjudicator and formation of dispute resolution committee under Sub-section (4), and their functions, duties and power and procedure for resolution of dispute shall be as prescribed.

59. Termination of Procurement Contract and Remedy Therefor: (1) The procurement contract shall have to specify the grounds in which such contract may be terminated.

(2) The main grounds under Sub-section (1) may be the following:-

- (a) Grounds that the Public Entity may terminate procurement contract if the supplier, consultant, service provider or

construction entrepreneur breaches the procurement contract,

- (b) Grounds that the Public Entity may terminate the procurement contract on the grounds of convenience for public interest,
- (c) Grounds that a supplier, consultant, service provider or construction entrepreneur may terminate the procurement contract, and
- (d) Grounds that procurement contract may be terminated for *force majeure*.

(3) A procurement contract shall include along with the following matters the provision of financial settlement and compensation to be made in the event of termination of the procurement contract:-

- (a) If payment is remaining to be made for the value of work, supply or service that has already been satisfactorily completed, payment thereof,
- (b) Liability to be borne by a defaulting supplier, consultant, service provider or construction entrepreneur for the increased cost to be incurred by the Public Entity to carryout or cause to be carried out the work under the procurement contract,
- (c) Amount of the actual loss sustained by the supplier or consultant or service provider or construction entrepreneur due to the termination of procurement contract by the Public Entity without any default on his/her part.

(4) Unless otherwise provided in the procurement contract, for public interest, the Public Entity may terminate a procurement contract on the grounds of convenience.

(5) Where a procurement contract has been terminated pursuant to Sub-

section (4), the Public Entity shall have to pay the value for the following work that has been completed prior to the termination of the said contract :-

- (a) Payment due under clause (a) of Sub-section (2),
- (b) Where expenditure is to be paid on reimbursement basis, such expenditure as actually incurred,
- (c) The price of the goods specially manufactured for the Public Entity under the procurement contract,
- (d) Excluding the lost profit and the amount under clause (c) of Sub-section (3), the expenditure incurred for termination of the procurement contract, and
- (e) Other expenditure as prescribed.

60. **Public Notice of Procurement Contract:** After a procurement contract has been concluded pursuant to this chapter, the Public Entity shall have to publish as prescribed a notice including the result of the evaluation of bid or consultancy service.

Chapter-8

Provision Relating to Conduct

61. **Conduct of the Official Involved in Public Procurement Proceedings:** (1) Any officials involved in the act of formulating procurement plan, operating procurement proceedings, implementing procurement contract or other act as prescribed relating to procurement of the Public Entity, shall have to follow the following conduct:-
- (a) Discharging one's duty impartially so that bidders fairly compete in the procurement proceedings,
 - (b) Operating procurement proceedings in public interest,
 - (c) Not committing an act conflicting interest with the

procurement from his/her work or conduct or behavior,

- (d) Keeping confidential all proprietary information of the bidder known by him /her in the course of the procurement proceedings,
- (e) Not working with a person, firm, organization, company and any other institution of private nature with which s/he had had dealings of procurement at the time of holding post for two years after retirement,
- (f) If s/he knows that his/her nearest relatives have participated as a bidder or proponent in the procurement proceedings of his/her involvement, not taking part in such procurement proceedings by giving immediate notification to one level higher authority,

Explanation: For the purpose of this clause **nearest relative** means husband, wife, father, mother, son, daughter of a joint family, mother-in-law, father-in-law, elder brother, younger brother, elder sister, younger sister, son-in-law, sister-in-law or brother-in-law.

- (g) Not committing an act in contravention of prevailing law, while carrying out procurement proceedings,
- (h) Not committing corrupt or fraudulent practice nor involving in such act,
- (i) Not colluding or involving in a group prior to or after submitting bid or proposal with the objective of forbidding or causing to be forbidden the benefit of competition.

62. Conduct of Bidder or Proponent: (1) A bidder or proponent shall have to accomplish such obligation as referred to in this Act or Regulations made thereunder, procurement contract and other documents relating to procurement.

(2) Without prejudice of the generalities of the provision of Sub-section (1), a bidder or proponent shall not carry out or cause to be carried out the following act with the intention of making interference in the procurement process or the implementation of procurement contract:-

- (a) Giving or offering directly or indirectly improper inducement,
- (b) Submitting a fact by distortion or misrepresentation,
- (c) Engaging in corrupt or fraudulent practice or involving in such act,
- (d) Intervening in the participation of other competing bidder or proponent to be involved in any way in the proceedings relating to bid or proposal,
- (e) Commit an act of threatening directly or indirectly to cause harm to the body, person or property of any person to be involved in the procurement proceedings or coercive act,
- (f) Making collusion or involving in groupism prior to or after submission of bid or proposal with the objective of allocating procurement contract among the bidders or proponents or fixing the price of bid or proposal artificially or noncompetitively or otherwise forbidding the Public Entity of the benefit of open and free competition,
- (g) Contacting the Public Entity from the time of the opening of bid or proposal until the notice of acceptance of bid or proposal is given with the objective of causing interference upon bid or proposal or committing an act of interference in

the examination or evaluation of bid or in the evaluation of proposal.

(3) A bidder responsible for preparing bidding documents or specifications of a procurement contract or for supervising the implementation procurement contract or a person or firm or organization or company affiliated with him/her, or an employee working in such firm or organization or company cannot participate in the bidding proceedings of such procurement.

Provided that this provision shall not be applicable in the case of a turn key procurement contract or procurement contract so concluded as to carry out both the design and construction work.

63. Blacklisting and Exclusion From the Blacklist: (1) The Public Procurement Monitoring Office may blacklist a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company in the following grounds from one year to three years on the basis of seriousness of his/her/ act:-

- (a) If it is proved that s/he has committed an act contrary to the conduct as referred to in Section 62,
- (b) If a proponent of a proposal selected for acceptance does not come to sign the contract pursuant to Section 38,
- (c) If it is proved latter that s/he had committed substantial defect in implementing procurement contract or had not substantially fulfilled obligation under the contract or the work carried out according to the procurement contract is not of the quality as per the said contract,
- (d) If convicted from a court of law in a criminal offense liable to be disqualified for taking part in procurement contract,
- (e) If s/he/it is proved of having signed the procurement contract

by falsifying qualification or misrepresenting,

(f) Any other conditions as prescribed.

(2) A bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company blacklisted pursuant to Sub-section (1) shall be debarred from taking part in the procurement proceedings of a Public Entity up to that period.

(3) Notwithstanding anything contained elsewhere in this Section, a person, firm, organization or company blacklisted by a competent authority under prevailing law for not paying a loan of a bank or financial institution shall not be eligible to take part in the procurement proceeding of a Public Entity during the period of such blacklisting.

(4) If the person, firm, organization or company ineligible to take part in the public procurement proceedings pursuant to Sub-section (2) or (3) is found to have taken part in a procurement of a Public Entity, no action shall be taken over his/her bid or proposal.

(5) Other provision concerning blacklisting pursuant to Sub-section (1) shall be as prescribed.

(6) A bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company blacklisted pursuant to Sub-section (1), (2), (3), (4), and (5) shall be excluded from the blacklist as per the criteria prepared by the Public Procurement Monitoring Office for exclusion from the blacklist.

Chapter-9

Provision Relating to Monitoring of Procurement Activities

64. Public Procurement Monitoring Office: (1) A Public Procurement Monitoring Office under the Office of the Prime Minister and Council of

Ministers shall be established in order to monitor procurement activities,

(2) The chief of the office under Sub-section (1) shall be an employee of the gazetted special class of the civil service of Government of Nepal.

(3) Notwithstanding anything contained elsewhere in this Section until the Public Procurement Monitoring Office is established pursuant to Sub-section (1), the Office of the Financial Comptroller General may function as the Public Procurement Monitoring Office for not exceeding six months.

65. Functions, Duties and Powers of Public Procurement Monitoring Office :

(1) The functions, duties and powers of the Public Procurement Monitoring Office, in addition to the ones referred to elsewhere in this Act, shall be as follows:-

- (a) To make recommendation to the government of Nepal for reform in the procurement policy or laws in force,
- (b) To issue technical guidelines and manuals required for implementing this Act,
- (c) To prepare standard model of the standard bidding documents, prequalification documents, procurement contract document and documents relating to proposal to be used by a Public Entity to conduct procurement proceedings,
- (d) To collect statistics of procurement proceedings to be operated or operated by a Public Entity and to monitor or to make or cause to be made technical auditing of whether or not such proceedings are conducted in compliance with this Act or Regulations or manual, made thereunder.
- (e) If the Public Entity seeks opinion, advice about a matter as referred to in this Act or Regulations, Manuals made thereunder, to provide opinion, advice,

- (f) To establish and operate procurement website,
 - (g) To publish a bulletin in order to have made public this Act and the Regulations, Manuals, Technical Notes made thereunder and public procurement related writings, article, material and similar other matters,
 - (h) To prepare procedures required for coordination in the procurement proceedings and submit to the Government of Nepal for approval,
 - (i) To make arrangements for regular training program for the bidder or the employee involved or to be involved in procurement proceedings,
 - (j) To make necessary criteria of exclusion from the blacklist under Section 63 and exclude from such blacklist as per such criteria,
 - (k) To review, appraise construction works, supply, consultancy service, and other services system in order to make the procurement system effective, and to solicit regularly suggestion from customers or international organization and other foreign bodies as per necessity,
 - (l) To prepare plan of domestic or foreign assistance required to systematize and reform procurement system and to act as the central body for coordinating such assistance,
 - (m) To submit the annual report of the procurement proceedings to the Government of Nepal, and
 - (n) To do other prescribed functions.
- (2) Notwithstanding anything contained in Sub-section (1), the Public

Procurement Monitoring Office shall not involve in any manner in the procurement proceedings, except the procurement proceedings of its office, of other public entities nor shall resolve any dispute arisen in respect thereof.

(3) The Public Procurement Monitoring Office shall carry out the work of the secretariat of the Review Committee under Section 48 and it shall have to make arrangements of the budget required for the committee.

Chapter-10

Miscellaneous

66. Provision Concerning Procurement to be Made in Special Circumstances:

(1) Notwithstanding anything contained elsewhere in this Act, where the occurrence of special circumstance has created a situation in which, if a procurement is not made immediately, the public entity will sustain further loss, the Public Entity may procure or cause to be procured immediately.

(2) The chief of the Public Entity shall have to give information of the circumstances under Sub-section (1) and the detailed description concerning the procurement to be made immediately to one level higher authority.

(3) Other provision concerning procurement to be made in special circumstances shall be as prescribed.

67. Procurement Process under this Act not to be Applied: (1) Notwithstanding anything contained elsewhere in this Act, the procurement process under this Act need not be applied in the following conditions:-

- (a) If the Government of Nepal decides that procurement relating to security, strategic or defense by application of the process in accordance with this Act is not appropriate for the interest of national security or defense , or

(b) If as per the agreement between government of Nepal and donor party, procurement is to be made in accordance with the Procurement Guidelines of a donor party.

(2) In making a decision pursuant to clause (a) of Sub-section (1), Government of Nepal shall have to state reasons for procurement and determine separate procedure related thereto as well.

68. Method of Communication: (1) Any document, notice, decision or other information as referred to in this Act and Regulations made thereunder, bidding documents, documents relating to request for proposal or procurement contract as to be given by the Public Entity to a bidder, consultant or by a bidder or consultant to the Public Entity shall, unless otherwise provided for in this Act, be given in writing.

(2) In case where a notice transmitted pursuant to Sub-section (1) could not be served due to failure to trace out the address of the recipient bidder or consultant or for any other reason, a public notice shall be published in a newspaper of national circulation stating therein brief description thereof and where a notice is so published such person shall be deemed to have received the notice.

69. Procurement Transaction May be Carried Out Through Electronic Communications Means: (1) Notwithstanding anything contained elsewhere in this Act, Government of Nepal may, by publication of a notice in the Nepal Gazette, provide a mechanism that the Public Entity may arrange, through the means of electronic communications, invite a pre-qualification proposal, issue notice of bid invitation, prepare a short list by inviting expression of interest, invite a proposal of consultancy service, transmit bidding or pre-qualifying documents, receive bids, proposals for pre-qualification or consultancy services, conclude the procurement contract, make payment and give and receive other notices.

(2) The means of communications under Sub-section (1) shall be used in the following manner:-

- (a) That the content of communications in such means of communications is legally valid and preserved,
- (b) That the security of such communications means is adequate,
- (c) That bidder's access to the procurement proceeding is not inappropriately restricted,
- (d) That it is not in contravention of this Act and rule made thereunder and other prevailing law.

70. Legal Documents to be kept in Website: For information and convenience of general public, this Act and Regulations and Procurement Manuals made thereunder shall be kept in the website of the Public Procurement Monitoring Office.

71. Evaluation Committee to be Formed: (1) The Public Entity shall have to form an evaluation committee as prescribed for examination and evaluation of the pre-qualification proposals, bids, expression of interest or proposals of consultancy services or sealed quotation.

(2) The functions, duties and powers of the committee formed pursuant to Sub-section (1) shall be as prescribed.

72. Records of Procurement Proceedings: The Public Entity shall have to keep safely the records of the documents of the procurement proceedings for a prescribed period.

73. Delegation of Power: Out of the powers conferred on him/her by this Act or rule made thereunder, a competent authority may delegate the powers other than the prescribed one, to any staff.

74. Power to Make Rules: (1) The Government of Nepal may make Rules required for implementation of the objective of this Act.

(2) Notwithstanding any thing contained in Sub-section (1), the Public Entity other than the one as referred to in sub-clause (1) of clause (b) of Section 2 may make necessary Rules subject to the Act, Rules or Formation Order relating to such entity.

75. Repeal and Amendment: (1) The provision to Section 168 of the Traffic and Transportation Management Act, 1992 is hereby repealed.

(2) Notwithstanding anything contained in prevailing law, legal provision relating to the procurement of the Public Entity under clause (b) of Section 2 shall be deemed to have *ipso facto* been so amended as to be compatible to this Act to the extent of their inconsistency with this Act.

(3) Instead of Section 7 of Financial Procedure Act, 1998, the following Section 7 has been substituted:-

"7 Procedure of Making Expenditure: Provision concerning financial administration relating to operation of government transactions and project implementation, deposit, charges, service fee, taking advance and settlement thereof, preservation of government's cash and goods-in-and property, auction, remission, and other miscellaneous provision and procedure related thereto shall be as prescribed."

76. Saving: All the acts and proceedings relating to procurement carried out under the Financial Procedure Act, 1998 and the Financial Administrations Regulations, 1999 made thereunder and the provisions of the Act, Rule or Formation Order related to procurement of the Public Entity as referred to in sub-clause (2), (3), (4), (5) and (6) of Clause (b) of Section 2 shall be deemed to have been carried out under this Act.