

ISLAMIC REPUBLIC OF AFGHANISTAN

**PROCUREMENT LAW, 2008**

(Amendments made in January, 2009 incorporated)

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## CHAPTER I: GENERAL PROVISIONS

### Article 1: Objective

This law is enacted pursuant to the provision of Article 75, section 4 of the Constitution to regulate the public procurement of goods, services and coordination of works, both domestic and foreign, for administrations, institutions, and mixed companies.

### Article 2: The Purpose

The purposes of this Law are:

- ensuring transparency in procurement proceedings;
- [to have] effective control of financial affairs and public expenditure;
- ensuring economy [best value for money] in the procurement of goods, works and services;
- providing tendering opportunities for participation to all eligible bidders in procurement proceedings.

### Article 3: Terminology

The following terms [as used] in this Law shall have the meanings provided below:

- (1) “*Procurement*” means acquisition of goods, works or services by entity or through a contractor by use of public funds.
- (2) “*Award authority*” means the person with authority to award a contract or approve a contract modification concerning the procurement of goods, services or works, pursuant to provisions of this Law and the Public Finance and Expenditure Management Law.
- (3) “*Bidder*” means a legal or natural person, according to the provisions of the bidding documents who, or whose legal representative; submits an offer and participates in the procurement proceedings in accordance with provisions of this Law.
- (4) “*Bid*” means a tender, proposal, or price quotation given by a bidder in response to an invitation or request for the provision of goods, works or services.
- (5) “*Bidding Documents*” means documents [issued by the Entity] describing quantity, quality, characteristics of the goods, works and [non-consulting] services [to be procured], conditions and the procedure for submitting a bid.
- (6) “*Request for Quotations*” means the document used to carry out low-value procurement of standard goods or services [or] works, in accordance with the provisions of this law
- (7) “*Open Tender*” is the [procurement] method, in which any bidder may submit a bid concerning the procurement of his interest, in compliance with the specifications set forth in the bidding documents, to the relevant entity.
- (8) “*Restricted Tender*” means the tendering method in which a limited number of bidders, which shall not be less than three, are invited to bid.
- (9) “*Single Source Procurement*” refers to the method of procurement in which the

procurement contract is concluded directly without holding a competitive proceeding as provided for in this Law.

- (10) “*Procurement Contract*” means the written agreement made by an entity with a contractor with respect to the procurement
- (11) “*Procurement Proceeding*” means all the procurement activities that follow the procurement initiation decision as provided for in this Law, including any pre-qualification proceedings, that terminate with the completion of the procurement in accordance with the procurement contract provisions.
- (12) “*Request for proposal for Consultancy Services*” means the document utilized for procurement of consultants’ services in which the procedures and conditions for submission of proposals is described.
- (13) “*Contractor*” is a successful bidder who contracts with a procuring entity to provide goods, works and services.
- (14) “*Responsive Bid*” is a bid submitted by bidder that is in accordance to the requirements of bidding documents.
- (15) “*Securities*” means the funds in cash or in kind, immovable property, or bank guarantee that the bidder or contractor provides to secure his obligations.
- (16) “*Goods*” (*ajnas*) means objects of every kind including raw materials, products and equipments whether in solid, liquid or gaseous form, as well as services incidental to the provision of the goods provided the value of such incidental services does not exceed that of the goods.
- (17) “*Tendering*” means any formal and competitive procurement procedure through which bids are requested, received and evaluated for the procurement of goods, works, and services, and as a consequence of which an award is made to the successful bidder.
- (18) “*Auction*” (*Muzaida*) means a process in which persons participate in a bidding gathering aiming at increase on the price of government’s movable/immovable property intended for sale or lease.
- (19) “*Procurement Committee*” is a Committee of Directors and Officials appointed by the entity to carry out procurement proceedings as provided for by this Law.
- (20) “*Procurement office*” is the office responsible to carry out procurement activities according to the functions provided for by this Law.
- (21) “*Inspection Committee*” is a Committee of officials appointed by the entity for the purpose of assuring qualitative and quantitative procurement performance as provided for by this Law.
- (22) “*Evaluation Committee*” is a Committee appointed by the entity in order to evaluate and compare bids and prepare and submit evaluation report.
- (23) “*Entity*” (*edaara*) means any ministry, independent head departments, state owned enterprises, other budgetary unit, and also municipality, government companies and mixed companies in which the share of State ownership exceeds twenty-five percent (25%).

- (24) “*Consultants’ services*” refers to activities of a professional, intellectual, and advisory nature. Provision of materials and goods or works shall be an exception to this rule, except when the works are of an informational nature. They include design, supervision, training, auditing, software development, expert proposals and advice, and similar technical or professional services.
- (25) “*Works*” includes work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or site preparation, excavation, erection, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the procurement contract, provided that the value of those services does not exceed that of the construction itself.

#### **Article 4: Scope of application**

The entities, municipalities and other units funded under government budget are required to procure goods, works and services in accordance with the provisions of this Law, except in cases as mentioned below:

- (1) where procurement of goods, works and services requires confidentiality to ensure the interests and protection of the nation;
- (2) where the procurement rules of an international institution conflict with this Law, the government may, taking into consideration the agreement in accordance with the mentioned rules, agree to procure the goods works or services funded in accordance with the provisions of the agreement;
- (3) Afghan government entities located abroad shall conduct procurement in accordance with rules and procedures of the host country and as per provisions of Article 91 of this Law, unless agreed otherwise.

#### **Article 5: Procurement Language**

- (1) The pre-qualification documents, bidding documents, contracts, agreements and contract conditions shall be formulated in one of the official languages of Afghanistan. In the case of entering into a contract with international organization concerning a tender, specifications of bidding, layout and technical reports may , at the discretion of the Procuring entity, be in English or other language used in international trade.
- (2) Any foreign language document submitted with a bid shall be accompanied by a translation into an official language of Afghanistan, translated by a certified or authorized translator at the expense of the bidder unless otherwise provided in the bidding documents.

#### **Article 6: Standard Documents and Forms**

Procuring entities shall utilize the standard bidding documents, forms of contract, and other forms issued by the Procurement Policy Unit (PPU).

#### **Article 7: Preferences for the Procurement from National Sources**

- (1) The entity shall be obliged to procure goods, works or services produced [furnished] domestically in accordance with the bidding documents; provided that the price of the domestic procurement is not higher than the imported procurement by a percentage set in the procedure.
- (2) In comparing the bids of bidders who do not have a resident representative in Afghanistan or who are otherwise not subject to state [Afghanistan] taxes, with the bids of bidders that do have a resident representative or are otherwise subject to Afghanistan taxes, the bid prices of the first category shall be increased by the percentage set in the procedure for purpose of evaluation.
- (3) Details and method for application of preferences shall be set forth in the relevant procedures.

#### **Article 8: Participation of Small Domestic Enterprises in Procurement**

The PPU may, in cooperation with the procuring entities, establish methods to facilitate participation by small domestic enterprises and individuals in procurement, in accordance with this Law.

#### **Article 9: Environmental Protection**

The PPU may provide guidelines for implementing environmental protection measures in procurement Proceedings in accordance with the provisions of Law.

#### **Article 10: Introduction of Information Technology**

- (1) Procuring entities shall seek ways to employ information technology in procurement affairs and shall submit related proposals to the PPU for approval, which shall be provided for any proposals that would help, carry out the purposes of this Law.
- (2) The PPU may prepare, organize and implement separate measure for use of Information Technology.



## **CHAPTER II: PROCUREMENT PLANNING**

### **Article 11: Procurement Plan Development**

- (1) Entities shall develop procurement plans that will carry out the purposes of this Law, taking into account:
  - available financial resources;
  - economies of scale and volume;
  - appropriate time; and
  - other limitations.
- (2) Entities shall comply with the Public Finance and Expenditure Management Law (PFEML) in submitting their procurement plans

### **Article 12: Initiation of Procurement Proceeding**

- (1) No procurement proceeding may begin prior to the approval of the details of the procurement, the verification of needs and the allotment of budget.
- (2) The cumulative value of similar goods, works or services to be procured during a fiscal year shall be specified and calculated by the entity.

### **Article 13: Allocation of Funds**

- (1) The allocation of funds in pursuant to provisions of Article 12(1) of this Law shall be certified in bidding documents and request for proposals. Each procurement contract, including any purchase order shall specify the applicable budget code.
- (2) In exceptional circumstances; the entity may initiate procurement proceedings after receiving the written approval from the Treasury Department of Ministry of Finance, without need to comply with the provisions of Article 12(1) of this Law.
- (3) Multi-year contracts may be entered into only on the basis of the prior approval of the Ministry of Finance. Planned procurement expenditures pursuant to multiyear contracts shall be reported to the Ministry of Finance annually in the documented form depicting the actual annual expenditure and progress of the contract.

### **Article 14: Description of the Procurement**

- (1) The bid documents, and any included plans, samples and designs shall clearly describe detailed requirements with respect to:
  - (i) quality and quantity;
  - (ii) services;
  - (iii) technical Specification;
  - (iv) symbols, terminology, packaging, marking and labeling;
  - (v) contract terms;
  - (vi) certification, testing and test methods or other means for evaluating.

- (2) To avoid creating obstacles to participation by bidders in the procurement proceedings bidding and pre-qualification documents shall provide descriptive information that does not unnecessarily favor a [particular] bidder by:
  - (i) describing the goods, works and services according to its ~~effectiveness of usage~~ [desired performance];
  - (ii) Describing national and international standards.
- (3) No requirement or reference shall be made in the technical specifications to a particular trademark or name, patent, design or type, specific origin, producer or service provider, unless:
  - (a) there is no other practical way of describing the procurement requirements,
  - (b) words such as “or the equivalent” are included in the specifications referenced in paragraph one of this Article.
- (4) The entity shall describe only actual needs which the procurement is intended to satisfy and avoid descriptions entailing features in excess of actual needs.

#### **Article 15: Lots**

- (1) If splitting up the procurement contract into separate lots or segments is financially and technically more advantageous to the procuring entity, and is not done for preventing competitive methods of procurement as described in Article 16, the procurement may be so divided and the separate parts may be awarded to different bidders.
- (2) In case of dividing a procurement contract, the instructions to bidders shall indicate:
  - (a) The number and the nature of the lots;
  - (b) How bids for one or more lots may be submitted, specifying whether separate bids shall be submitted for each lot; and
  - (c) The basis for an award, which shall be the lowest combination of evaluated bids.
- (3) All lots may be awarded to the same bidder, if that solution achieves the lowest evaluated bid for the combined lots.
- (4) If one or more lots have not been awarded, the procuring entity may, in any new procurement proceedings, modify the division of the lots that have not been awarded.

#### **Article 16: Dis-aggregation of Procurement**

- (1) It is not permitted to divide procurement for the purpose of using of a less competitive procurement method.
- (2) The divided procurement that exceeds thresholds for award authority shall be accurately audited by the PPU to assure compliance with Article 16(1) of this Law.

## CHAPTER III: ELIGIBILITY AND QUALIFICATION OF BIDDERS

### Article 17: Eligibility and Qualification

- (1) In order to be eligible to participate in procurement, a bidder shall:
  - (i) have the legal capacity to enter into the contract;
  - (ii) not be insolvent, in receivership, bankrupt or being wound up, its business activities have not been suspended, and it is not the subject of legal proceedings for any of the foregoing;
  - (iii) not have a conflicting interest which would cause it to benefit by failing to conclude the procurement contract;
  - (iv) not have been, within a period of three (3) years prior to the participation in the procurement proceedings, convicted relating to business or professional misconduct, or that involved false statements as to its qualifications to enter into a procurement contract;
  - (v) not be subject to debarment pursuant to Article 70 of this Law;
  - (vi) not have been associated with and neither a relative of a bidder or contractor currently subject to debarment pursuant to sub-paragraph (v) of paragraph (1) of this Article.
- (2) (*Fiqara 1*) Sub-paragraphs (iv) to (vi) shall also apply to the bidder's (a legal person) directors and officers.
- (3) A bidder shall show that it possesses the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, business reputation, and personnel necessary to perform the contract to be able to participate in the procurement process.
- (4) The procuring entity shall be obliged to evaluate the eligibility and qualification of bidders in accordance with the requirements and standards set out in the qualification documents or bidding documents, and in accordance with this Article.
- (5) A bidder shall be disqualified if he/she submits false information concerning his/her eligibility and qualifications or, in connection with important matters, inaccurate or incomplete information and fails to correct such deficiencies promptly upon request by the entity.

### Article 18: Prequalification of Bidders

- (1) A prequalification proceeding may be held for procurements of complexity, or for groups of contracts in order to identify bidders that are qualified to submit bids. Qualifications of bidders in prequalification proceedings will be assessed in accordance with Article 17(3).
- (2) Prequalification documents shall be provided to all bidders responding to the invitation to prequalify and shall contain all information required to complete applications for prequalification. Responses to requests for clarification of the prequalification documents shall be communicated in writing to all bidders within 10 working days for national tendering and 14 working days for international tendering prior to the

prequalification. If necessary in order to allow bidders sufficient time to respond, the procuring entity shall be obliged to extend the deadline for submission of applications.

- (3) The procuring Entity shall make a decision with respect to each application to prequalify. All bidders that have been prequalified shall be invited to submit bids in the procurement proceedings.

#### **Article 19: Database of Bidders**

- (1) The Ministry of Finance (MOF) and other entities shall develop data base to facilitate the identification of eligible bidders. The data base shall be designed to be easily used by the widest possible audience, preferably posted on a website (on the Internet), and shall be kept updated.
- (2) Database of eligible bidders shall be carried out as follows:
  - (i) requests to be registered in the database, may be received at any time and shall be acted upon;
  - (ii) any bidder who satisfies the provisions of Article 17 of this Law shall be entered in the database;
- (3) exclusion from such a database is not alone reason to exclude a bidder from participating in a procurement proceeding;
- (4) the existence of the database, the criteria for entry in the database, the methods for verifying those criteria, the period of validity of an entry in the database, and the procedures for entry and for renewal of the entry shall be made available to interested parties without imposition of any condition;
- (5) persons entered in the database shall be given notice of their entry or removal from the database;
- (6) The Ministry of Finance (MOF) and other entities shall enter and publish in database details of bidders and contractors who have been debarred due to violation of the provisions of this Law.

### **CHAPTER IV: PROCUREMENT PROCEEDINGS AND CONDITIONS FOR IMPLEMENTATION THEREOF**

#### **Article 20: Procurement Method**

- (1) Procurement is carried out through one of the following methods:
  - (i) request for quotations;
  - (ii) open tendering;
  - (iii) restricted tendering;
  - (iv) single source procurement;
  - (v) international tendering
  - (vi) Invitation to bidders for two stage tendering.
  - (vii) Procurement of infrastructure and award of concessions.

- (2) The selection of appropriate procurement method shall be made in the procurement plan, in accordance with the provisions of this Law.

## **21. Request for Quotations**

- (1) Request for quotations shall be presented when a record is made in the procurement proceedings that the estimated value does not exceed the maximum amount set in Article 91(1)(viii) of this Law for the procurement of:
  - (i) Readily available commercially standard goods not specially manufactured to the particular specifications of the procuring organization,
  - (ii) Works,
  - (iii) Services.
- (2) The request for quotations shall state [in writing] the requirements as to quality, quantity, terms, time of delivery, a time for submission of the quotation, and any other special requirements, which shall be fair for all bidders
- (3) The request for quotations shall be submitted to at least three qualified bidders
- (4) Request for quotations proceedings shall be national if the desired goods, works or services are available from at least three sources in Afghanistan at appropriate prices.
- (5) Each bidder may submit, within the time permitted, one quotation, in writing, which may not be altered or negotiated, and which shall be accompanied by a certified copy of the bidder's business registration. Quotations may be submitted by facsimile, electronic mail or any form that leaves a record of the content of the communication.
- (6) The bidder that provided the lowest-priced quotation meeting the requirements of the procuring entity, as stated in the request shall be selected as the winner.
- (7) The successful bidder's written acceptance of the purchase order shall constitute the procurement contract and a separate contract is not required.
- (8) The purchase process and the request for quotation proceeding shall be presented in accordance with Annex to this Law.

## **Article 22: Open Tendering**

- (1) Except when provided differently in this Law, open tendering shall be the default procurement method for goods, works and non-consultancy services.
- (2) A written justification shall be placed in the record of the procurement proceedings stating the reasons for using a procurement method other than open tendering.

## **Article 23: Restricted Tendering**

Restricted tendering may be used in the following cases:

- (i) when the goods, works or services are only available from a limited number of bidders; or
- (ii) when the time and cost of considering a large number of bids is disproportionate to the value of the procurement;
- (iii) in the case of unforeseeable circumstances, not due to the conduct of the procuring entity, which cause the time required for open tendering to be impractical.

#### **Article 24: Single-Source Procurement**

- (1) Single-source procurement is permitted only in the following circumstances:
  - (i) the decision of the Procurement Committee supported by its written justification, included in the record of the procurement proceeding; demonstrates that only one contractor is able to fulfill the procurement requirements within the time required;
  - (ii) the contractor has exclusive rights in the goods, works or services needed, in accordance with the provisions of this Law, for which no adequate substitute exists; or
  - (iii) when there is an emergency need for the goods, works or services, involving an imminent threat to public health, welfare, or safety, or an imminent threat of damage to property, and the time required for engaging in tendering proceedings or other procurement methods would be impractical.
  - (iv) The estimated value of the procurement does not exceed 3000 Afs.
  - (v) The estimated value of the procurement does not exceed the amount set out in Article 91(1) (v) and (vi)
- (2) A written procurement contract must be used for single-source procurement. The procuring entity shall prepare a written description of its requirements as to quality, quantity, terms, time of delivery, and any special requirements, and shall be required to negotiate with the bidder, in accordance with the related procedures.

#### **Article 25: International Tendering**

An international tendering may be held in the following conditions:

- (1) the goods, works or services are not available on competitive price terms from at least three (3) bidders in Afghanistan; or
- (2) a national tendering proceeding has failed to identify an acceptable bidder.

#### **Article 26: Procurement Announcement**

The announcement of procurement shall include following information:

- (i) procurement description;
- (ii) the means for obtaining the bidding documents;
- (iii) the deadline for the submission of bids, and the time and venue for holding tendering sessions;
- (iv) the procuring entity address;
- (v) Requirement for provision [or otherwise] of security.
- (vi) Any other information in accordance with the provisions of this Law.

### **Article 27: Publication of Announcement**

- (1) The announcement of a tendering proceeding, an invitation to pre-qualify, or a notice of a restricted tender, shall be published in the mass media, and, in the case of international tendering, published in the English language in media of wider international circulation, the expenditure for same to be met by procuring entity. For both domestic and international procurement, procuring entities shall to the greatest extent feasible, also publish procurement announcements through the internet.
- (2) No publication of announcement is required for single source procurement.

### **Article 28: Announcement for Restricted Tendering**

- (1) Notice of a restricted tendering, shall be published at least fourteen (14) working days prior to the issuance of bidding documents with the list of the bidders, and state the reasons for restricted tendering. The notice shall also state the deadline for submitting bids and means by which other bidders may request to participate in the procurement proceedings.
- (2) In case of restricted tendering pursuant to Article 23 of this Law, bids shall be solicited from a minimum number of three bidders.
- (3) Other provisions relevant to tendering proceedings set forth in this Law apply to restricted tendering proceedings.

### **Article 29: Unsuccessful Proceeding**

Where no responsive bid/ proposal has been received in response to an invitation for tendering / a request for proposals, the Procurement Office shall investigate the reasons therefore; and prepare a report proposing to adjust the bidding documents / the request for proposals; or to use an alternative method of procurement. This report shall be submitted to the award authority for approval.

### **Article 30: Bidding Documents**

- (1) Bidding documents shall be sent or provided to all eligible bidders responding to the invitation to bid.
- (2) The bidding documents, which are prepared by the procuring entity, shall provide a basis for the tendering proceeding, and shall include:
  - (i) instructions for the preparation and submission of bids, description of the procurement, information contained in the announcement, the date and place for opening the bids, and the period of time during which bids shall remain valid;
  - (ii) criteria for evaluating bidders eligibility and qualification;
  - (iii) bid evaluation criteria;
  - (iv) Requirement of the entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of bid security to be provided by bidders submitting bids, and such requirement for any security for the

- performance of the procurement contract to be provided by the bidder entering into the procurement contract;
- (v) procurement proceedings method;
  - (vi) The currency or currencies in which the bid price is to be formulated and expressed; and payment terms
  - (vii) The manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements such as any applicable transportation and insurance charges, customs duties and taxes;
  - (viii) The quantity, nature and required technical and quality characteristics of the goods, works or services to be procured, necessary technical specifications, any incidental services to be performed; the location where the construction is to be effected or the services are to be provided; and the desired or required time, if any, when the goods are to be delivered, the construction is to be effected or the services are to be provided;
  - (ix) criteria for the contractor eligibility pursuant to provisions of this Law;
  - (x) Any other information in accordance with the provisions of this Law or prescribed by the PPU.

### **Article 31: Clarification of Bidding Documents and Request For Proposals**

- (1) The Entity shall promptly respond to a bidder who [sends a written] request for clarification of the bidding documents or of the request for proposals, provided the request for clarification is received by the procuring entity at least fourteen (14) working days prior to the deadline for the submission of bids or proposals.
- (2) Responses to requests for clarification, as well as any modification made subsequently to the bidding documents, shall be communicated in writing within seven (7) working days [after receipt] of the request. The procuring entity may if necessary extend the deadline for submission of bids.

### **Article 32: Submission of Bids**

- (1) The date and time by which bids must be submitted from the issuance of the bidding documents, shall be from twenty-one (21) to ninety (90) working days unless stipulated otherwise in this Law
- (2) The bid shall be signed by the bidder or the authorized representative of the bidder, and shall be sealed prior to submission.
- (3) The minimum time if specified in international agreement is to be followed.
- (4) Bids submitted after the time set for submission of bids shall be [rejected and] returned unopened.



### **Article 33: Opening and Evaluation of Bids**

- (1) Bids shall be opened at the nearest time upon submission deadline in a public proceeding in accordance with the bidding documents in the presence of bidders or their legal representatives. The names and addresses of bidders attending the bid opening, and the respective bid prices, shall be recorded in the minutes, which shall be signed by all participating bidders
- (2) Bids remain valid until the time indicated in the bidding documents. The time of validity of a bid may be extended with the agreement of the bidder. In this case, the bidder must obtain an extension of any required bid security.
- (3) Bids shall be evaluated by the evaluation of bids committee and compared only according to the evaluation criteria listed in this Article and Article 30 of this Law. The procuring entity may seek clarifications of bids in writing, and only written responses may be considered. The Entity shall not accept requests for changes in, or negotiate any terms of the bids with the bidders.
- (4) The successful bid shall be the bid which is the lowest evaluated responsive bid taking into consideration the following specifications:
  - (i) provisions of Article 34 of this Law concerning the acceptance of a bid;
  - (ii) criteria specified in the bidding documents;
  - (iii) the predicted cost of operating, maintaining and repairing the goods or works, the time for delivery, the characteristics of the goods or works, the terms of payment, and guarantees;
  - (iv) the effect a bid would have on production, labor, local content, the transfer of technology, development of local technical, managerial, scientific and operational skills and the environment of the country;
  - (v) the evaluation of bids committee shall correct arithmetical errors appearing on the face of the bid;
  - (vi) bids that are not responsive to the requirements set forth in the bidding documents shall be rejected;
  - (vii) following the completion of the evaluation of bids and selection of the successful bidder, and the issuance of any approvals required from award authorities, actions must be taken into consideration Articles 35 and 63.

### **Article 34: Acceptance of Bids**

- (1) The Evaluation of Bids Committee shall prepare a report on the evaluation and comparison of bids in accordance with the criteria set forth in the bidding documents, and determine the successful bidder. The evaluation report shall be so organized as to demonstrate clearly the quantitative and qualitative advantages and disadvantages of each responsive bid, and shall include any dissenting opinions.
- (2) The evaluation of bids committee shall submit the report mentioned in Article 34(1), to the Procurement Committee for decision on the contract award. Where the Procurement Committee decision is subject to approval by a higher award authority, the evaluation report and recommendation shall be forwarded to the appropriate award authority for decision and approval.

- (3) If the successful bidder fails to conclude a contract in accordance with the terms set forth in the bidding documents, or the request for proposals, entity shall offer the contract award to the other qualified bidders in the order of their ranking in the evaluation of bids.

### **Article 35: Notice of Acceptance**

Following the publication of the notice in accordance with Article 63, the procuring entity shall send a written notice of acceptance of the bid to the successful bidder.

### **Article 36: Rejection of Bid and Cancellation of Proceedings**

- (1) Bids may be rejected in accordance with the provisions of this Law.  
A procuring entity may:
  - (i) reject all bids at any time prior to the acceptance of a bid;
  - (ii) cancel the procurement proceedings in the national interest.
- (2) The reason for rejecting all bids, and for canceling procurement proceedings, shall be noted in the record of the procurement proceedings and promptly communicated officially to all bidders.
- (3) If a decision to cancel the procurement proceedings is taken before the deadline for submission of bids, any bids received shall be returned unopened to the respective bidder.
- (4) A procuring entity shall not be liable to a bidder by reason of rejection of [all] bids or cancellation of procurement proceedings.

### **Article 37: Request for Proposals Proceedings**

- (1) A request for proposals for [consultancy] services will be sent to [a short list of] up to six eligible bidders who responded to an invitation for expressions of interest, provided the number of such responses was sufficient to ensure effective competition. The selection and number of bidders on the [short] list will be determined on the basis of the best qualified bidder among the bidders. The announcement for invitation of bidders shall be published by a notice in accordance with Article 27, which shall be published in a relevant trade publication or technical or professional journal (either electronic or printed). The notice shall describe the criteria for determining the bidders qualified to perform the required services.
- (2) The information necessary to enable bidders to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the procuring entity shall include the following:
  - (i) quality, time frame, location where the services are to be provided, terms of reference, required tasks and outputs;
  - (ii) the criteria to be used in evaluating and comparing proposals, including any applicable price adjustment formulas as provided in the related procedures;

- (iii) the contractual terms of the procurement, and conditions for entry into force of the procurement contract;
- (iv) instructions for preparation and submission of proposals, and the place and time for their submission;
- (v) whether selection of the successful proposal will be based on quality and cost, quality only, lowest price, or on a fixed budget;
- (vi) conflict-of-interest, anti-fraud and other rules for maintaining eligibility; and
- (vii) such other matters as may be prescribed in the procedures and standard document and templates prescribed by the PPU.

### **Article 38: Contract Award and Substitution of Staff**

- (1) Any award shall be made to the bidder whose proposal best meets the needs and evaluation criteria described in the request for proposals.
- (2) The successful bidder shall not be permitted to substitute key staff, unless both parties agree that undue delay by the entity in the selection process makes such changes unavoidable, or that such changes are critical to meet the objectives of the assignment. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

### **Article 39: Two-stage Tendering**

- (1) The procuring entity may, in order to find better solutions to its procurement needs, conduct an initial stage of consultations with bidders on the basis of bidding documents.
- (2) Two stage tendering may be used, based on revised bidding documents, to satisfy the following conditions.
  - (a) If the procuring entity can not provide reasons and clarifications concerning its requirements for the goods, works or services that will satisfy its procurement needs, and it seeks proposals as to various possible means of meeting its needs; or because of the technical character of the goods for works [or works], or because of the nature of the services, it is necessary for the procuring entity to negotiate with bidders under Article 24(2).
  - (b) If procurements are related to research, development, experiment or study, except where it involves the production of goods in commercial quantities or quantities sufficient to recover research and development costs.
- (3) In the first stage of two-stage tendering proceedings, the bidding documents shall invite bids relating to the technical, quality, or other characteristics of the goods, works or services, contractual terms and conditions of supply, and also, where relevant, the professional and technical competence and qualifications of the bidders, but not a bid price.
- (4) The procuring entity may, at the conclusion of the first stage, finalize technical or contractual terms of the bid documents.
- (5) In the second stage of the two-stage tendering proceedings, the procuring entity shall send to bidders whose first-stage bids have not been rejected a second-stage invitation to bid on the requirements determined as a result of the first stage of the proceeding. The second stage tender shall include prices.

(6) The procedure for tendering proceedings apply to second-stage tendering proceedings.

#### **Article 40: Procurement of Infrastructure and Award of Concessions**

Contracts for private investment in the construction and/or operation of public works and other public goods and contracts for service concessions shall be awarded in accordance with (*tarzulamal*) special procedures taking into consideration the following:

- (i) pre-qualification of bidders for procurement proceedings leading to the award of contract;
- (ii) accommodation for the participation of consortia;
- (iii) compliance with special provisions on solicitation of proposals and promotion of transparency when negotiations are used in the contract award process, in accordance with the provisions of this Law;
- (iv) identification of special technical and financial evaluation criteria;
- (v) identification of the exceptional situations in which contracts may be awarded without competition; [and,]
- (vi) establishment of procedures for non-solicited proposals, so as to encourage private initiative, while safeguarding competition and transparency.

### **CHAPTER V. SECURITIES**

#### **Article 41: Types of Securities**

- (1) The following securities shall be required from bidders:
  - (i) bid security;
  - (ii) performance security;
  - (iii) advance payment security.
- (2) The recording, and custody of securities, and verification of any extension, shall be assigned to the relevant entity.
- (3) The cases in which securities are not required will be mentioned in the relevant procedures.

#### **Article 42: Bid Securities**

- (1) The bidding documents shall require bidders to provide a bid security to secure its obligation to enter into a procurement contract. The required amount of the bid security shall be set forth in the bidding documents, in accordance with procedures, and shall be specified as an amount and not as a percentage of a bid price. The guarantee may be in the form of cash deposit, a bank guarantee, or an equivalent instrument such as a letter of credit, immovable property pledged by the bidder, or any other form of guarantee deemed acceptable by the entity.
- (2) In compliance with the bidding documents, a bid security is forfeited in the following circumstances:

- (i) modification or withdrawal of a bid after the deadline for submission of bids;
- (ii) refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;
- (iii) failure by the successful bidder to sign a procurement contract in accordance with the terms set forth in the bidding documents; or
- (iv) failure by the successful bidder to provide the performance security as required by the bidding documents;
- (v) bogus information provided by the bidder about his/her eligibility.

#### **Article 43: Performance Securities**

- (1) The bidding documents or the request for proposals may specify the type, amount and duration of any performance security that may be required to be submitted by the successful bidder to secure its contractual obligations.
- (2) After contract completion, when the contractor has no further responsibility concerning the performance security, any amounts retained from progress payments will be returned to the contractor.

#### **Article 44: Advance-Payment Guarantee**

A contractor who receives an advance payment under a procurement contract to fulfill his obligations under the contract may be required to provide a guarantee securing his obligation to repay the amount of the advance in the event of default under the contract or failure to satisfy terms identified in the bidding documents. The advance-payment guarantee shall be calculated upon deduction of payments made to the contractor, and returned to the contractor.

#### **Article 45: Alternative Security Arrangements**

- (1) In order to promote procurement contracts with small enterprises and individuals, the PPU may assist in providing them the means to satisfy bid and other security requirements. Alternative security arrangements are modified payment schedules, or partial retention of progress payments concerning them.
- (2) If authorized by the procurement contract provisions, the procuring entity may retain ten percent (10%) of the progress payments to secure fulfillment of the contractor's obligations, the retained money shall be transferred and kept in a special trust account designated by the Ministry of Finance.

## **CHAPTER VI: CONTRACT ADMINISTRATION**

### **Article 46: Standard Forms**

The procurement contract shall either utilize the standard forms of contract applicable under Article 6 of this Law, or contain the following terms, subject to the circumstances of the particular procurement proceeding:

- (i) complete name and address of the parties to the contract;
- (ii) the listing of contract documents by order of priority;
- (iii) specifications and performance criteria for the goods, works or services;
- (iv) quantity or number of the goods, services or scope of the work;
- (v) location, time and other conditions of delivery;
- (vi) required securities or bank guarantee, if applicable;
- (vii) responsibilities for delay in the event of *force majeure* (unforeseen events);
- (viii) guaranties;
- (ix) dispute settlement authority appointment, application of Law governing the contract, and other legal and rights related issues;
- (x) other provisions defined in this Law and provisions that clarify the contract.

### **Article 47: Pricing**

- (1) The procurement contract shall state a price expressed either as a unit price applied to quantities delivered, or a lump-sum applied to the performance of all or part of the contract, unless a different form of pricing is authorized in accordance with the provisions of this Law.
- (2) A procurement contract may provide for a provisional price, if it specifies the manner in which the price will be determined, and the use of such pricing is justified by the procurement proceedings.
- (3) Procurement contracts may include incentive clauses linked to improved delivery periods, improved quality, cost reduction, or other such performance factors.

### **Article 48: Contract Modification and Price Adjustment**

- (1) Contract variations that exceed the maximum variations allowed by the contract may modify the contract. Contract modifications must be signed by both parties and shall not change the basic nature or scope of the contract.
- (2) Contract modifications that would increase the value of the procurement contract by up to twenty five percent (25%) may be approved under the relevant procedures and by the appropriate award authority.
- (3) A contract modification, which exceeds a twenty five percent (25%) increase in value, requires either initiation of a new procurement proceeding, or approval as single-source procurement in accordance with article 24.
- (4) Procurement contracts of longer than twelve months may permit price adjustment for changes in costs.
- (5) [ A price adjustment clause of] the contract shall specify the timing for determining any price adjustments, the conditions which will justify the price adjustment, such as

increases or decreases in the cost of materials, labor, and energy, the formulas and indices that will determine the amount of any price adjustment, and other procedures to be followed.

- (6) The procurement contract shall be terminated or subject to re-negotiation, if price adjustment exceeds a certain sum or percentage of the contract.

#### **Article 49: Payment**

Payments shall be made in accordance with the schedule set forth in the procurement contract, which shall include compensation for any late payment.

#### **Article 50: Progress Payments**

- (1) The procurement contract may provide for the making of progress payments at defined points in the fulfillment of the procurement contract, such as completion of a percentage of the performance due under the contract, or at other performance milestones described in the contract.
- (2) The procurement contract may provide for retention of percentage of the progress payments as security in accordance with the provisions of Article 45 of this Law.
- (3) A progress payment is authorized by an [Interim] Certificate that confirms the conditions for payment.

#### **Article 51: Advance Payment**

- (1) Advance payments may be made when necessary to enable the effective implementation of the procurement contract.
- (2) Advance payments made under the procurement contract shall not exceed ten percent (10%) or such other percentage of the initial contract price set forth in the relevant procedures.
- (3) Unless otherwise stipulated in the procurement contract, an advance payment shall not be made unless an advance payment guarantee is furnished in accordance with the provisions of Article 44 of this Law.
- (4) The contractor shall utilize materials, equipment and labor acquired with the advance payment only for fulfillment of the procurement contract under which the advance payment was made.
- (5) Advance payments are subject the application of payment terms and to repayment.

#### **Article 52: Shipment**

Internationally recognized trade terms shall be applied to the import of goods with respect to transfer of title, measurement of responsibility with regard to risk of loss, delivery, transport insurance, and export and import formalities, as provided in the procurement contract.

#### **Article 53: Inspection of Goods and Works**

- (1) The procurement contract shall specify the rights of the entity to inspect, including observing and receiving reports on, all aspects of the performance of the contractor.
- (2) The contractor shall at its own expense, place at the entity's disposal any premises, facilities and personnel needed for normal inspections. The contractor and the entity shall each bear the expenses for the attendance of their respective representatives at the inspection.
- (3) The contractor shall compensate any deficiencies and omissions at its own expense.

#### **Article 54: Subcontracting**

- (1) The contractor may subcontract up to twenty percent (20%) of the performance of the procurement contract with the written consent of the entity.
- (2) Consent to a subcontract may be granted on condition that it does not affect any other responsibility of the contractor under the procurement contract, and the sub-contractor shall be qualified to carry out the same duties as the contractor.

#### **Article 55: After-Sale Service**

The procurement office may require a contractor to provide workshops and spare parts during the average operating life of goods that require after-sale service.

#### **Article 56: Insurance**

- (1) The procurement contract and subcontracts shall indicate the amount and essential terms of the required insurance.
- (2) The procuring entity reserves the right to reject the insurance coverage that does not comply with the requirements of the contract.

#### **Article 57: Remedies for Breach of Contract**

The procurement contract shall specify remedies for breach of the procurement contract by the contractor, which shall include:

- (i) rejection of defective performance;
- (ii) prompt removal and replacement of defective goods, or repair or replacement of



- defective performance;
- (iii) liquidated damages for delay, in accordance with the provisions of Article 58 of this Law;
- (iv) termination of the contract for default and procurement of replacement performance, at the expense of the defaulting party;
- (v) other remedies applicable pursuant to the contents of the contract or of this Law.

#### **Article 58: Liquidated Damages**

- (1) The procurement contract shall provide that the contractor is liable for payment of an agreed sum if there is a delay in contract performance. The relevant procedures shall provide the cases where such amount is not payable under the contract, when the completion in time is not an important factor.
- (2) Such a clause shall specify:
  - (i) the agreed sum to be paid per time-unit (day, week or month) of delay;
  - (ii) the maximum amount due under the clause.
- (3) The payment of liquidated damages does not affect the contractor's liability as stipulated in the contract.
- (4) In case of contract termination for default, the contractor will be liable for damages accruing until the entity obtains delivery or performance of a similar procurement.
- (5) Liquidated damages do not apply if the delay is beyond the control and without the fault or negligence of the contractor.

#### **Article 59: Contract Termination and Cancellation**

The procurement contract terminates upon fulfillment of all of its terms, and shall provide for termination prior to contract fulfillment, including,

- (i) termination by the entity on the grounds of default by the contractor in the performance of the contract;
- (ii) termination by the government to ensure national interest ;
- (iii) cancellation for impossibility of fulfillment of the terms of the contract due to *force majeure*.

#### **Article 60: Certification and Payment**

[All] procurements must be supervised and verified in accordance with the provision referred to in Article 85 of this Law. No payments shall be made without a properly signed Goods or Services Receipt or Completion or Interim Certificate.

#### **Article 61: Right to Claim for Damage Compensation**

In case of shortage of quantity or number, loss or damage to procurement goods or works, the procuring entity should claim for payment of the damage compensation.

## **CHAPTER VII: TRANSPERANCY AND ACCOUNTABILITY**

### **Article 62: Principles of transparency**

- (1) The following actions shall be taken to provide essential information concerning the procurement system in Afghanistan, as well as essential information concerning individual procurement proceedings to all interested parties:
  - (i) a compendium of legislative documents applicable to procurement shall be published by the PPU in printed or electronic formats;
  - (ii) the entity shall publish procurement proceedings through printed and broadcast media, and when feasible, the internet;
  - (iii) the bidding documents, invitations, requests and required instructions for preparing bids in procurement proceedings, such as the qualifications, technical requirements, evaluation criteria, and contractual terms, shall be made promptly and easily available to bidders and to the public by the entity in accordance with the provisions of Article 66 of this Law;
  - (iv) the results of procurement proceedings shall be widely published by the entity.
- (2) Any communication submitted by the entity to a bidder or by a bidder to the procuring entity, shall be in writing, unless the Law or the PPU has approved another method.
- (3) In order to further promote transparency in procurements, archives including evaluation reports shall be generated in procurement proceedings and summary records of procurement proceedings shall be kept, in accordance with the provisions of Article 66 of this Law.

### **Article 63: Public Notice of a Contract Award**

After the decision of the award authority, the entity shall publish the procurement proceedings, request for proposals [proceedings], the contract award with the winner, his name, address, and the contract value in the mass media and internet for public notice.

### **Article 64: Right of Unsuccessful Bidders to Explanation**

- (1) Unsuccessful bidder may seek clarification on the purpose of rejection of its application to pre-qualify, or of its bid, by submitting a written application to the respective entity.
- (2) The procuring entity shall, upon request, communicate promptly to the bidder the reason for the rejection of its application to pre-qualify, or of its bid, at the expense of the bidder.

### **Article 65: Registration of Contracts**

All procurement contracts shall be registered with the Contract Management Office of the Ministry of Finance in order to collect the relevant information from entities in accordance with relevant procedures.

### **Article 66: Record and Reports of Procurement Proceedings**

- (1) The procuring entity shall maintain a record of its procurement proceedings, which shall contain the following:
  - (i) description of the object of the procurement;
  - (ii) list of the participating bidders and their qualifications;
  - (iii) bid prices;
  - (iv) summary of the evaluation of bids, summary of any review proceedings, and the related decisions;
  - (v) requests for clarifications and any responses thereto;
  - (vi) statement of the reason for choice of a procurement method other than tendering or request for proposals for consultancy services (in case of accepting a bid or proposal);
  - (vii) information concerning the reason for action pursuant to the provisions of Article 36(2) of this Law.
- (2) The records stated in paragraph (1) of this Article shall, on request, be made available to bidders after a bid has been accepted, unless otherwise approved pursuant to the Law, or by order of a competent court or an authorized arbitrator which is provided for in the procurement contract.
- (3) The record shall be prepared and disclosed in a manner that avoids disclosure of relevant commercial information.
- (4) The entity shall preserve all documentation prepared or received in the procurement proceedings, in accordance with the relevant rules.
- (5) The Entity shall prepare and submit detailed reports on their procurement activities to the PPU in accordance with relevant procedures prescribing the content, format, and the frequency and dates for submission.

### **Article 67: Procurement Website**

The Entity shall develop a procurement website for the purpose of:

- (i) disseminating information from procuring entities concerning procurement opportunities;
- (ii) disseminating information relevant to the standard procurement specifications;
- (iii) providing bidding documents, requests for proposals, and invitations;
- (iv) assisting in the introduction of information technology in procurement affairs, and identifying ways in which existing procurement practices may be revised in order to obtain the greatest possible benefit through application of information technology;
- (v) publication of the registered contracts of the Central Contract Registry Office;
- (vi) collection and compiling for procuring entities information about vendor

- performance;
- (vii) collecting and compiling of information about products and their inspection results;
- (viii) compiling and posting, such planning information as historical purchasing information and trends, purchase lists, and agreements in effect related to procurement matters for use of procurement entities and bidders;
- (ix) posting information about the availability of surplus property;
- (x) posting any documents required to be published, provided or notified in accordance with this Law;
- (xi) any other purpose approved by the PPU.

#### **Article 68: Obligation of Procurement Officials**

- (1) Each procurement staff responsible for procurement shall comply with the following:
  - (i) Supervise the decisions that are based on adequate information and taken in good faith, in accordance with this Law, and in the best interest of the Nation;
  - (ii) assure that all bidders enjoy similar conditions in procurement proceedings and contract awards;
  - (iii) assure that procurement officials avoid personal benefit from relevant actions, either directly or indirectly through close relatives. Close relatives, for this purpose, includes children, father, grand father, mother, grand mother, spouse, brother, sister, uncle, aunt, and their children to second rank, father-in-law, brother-in-law, mother-in-law;
  - (iv) assure of the absence of fraudulent document and solicitation of favors;
  - (v) not reveal confidential information received in connection with procurement proceedings and received bids, including information concerning property of bidders.
- (2) Each member of a Procurement Committee shall on appointment to his or her duties subscribe the following oath: "I take oath by the name of Allah the Great that I understand Allah is present and observer during execution of assigned duties and shall faithfully and with integrity execute the duties and tasks of procurement in accordance with this Law".
- (3) Procurement staff who violate this Law are liable to applicable administrative sanctions, as well as to prosecution under the Law.

#### **Article 69: Obligations of Bidders and Contractors**

- (1) Bidders and contractors shall abide by following obligations under this Law:
  - (i) a bidder or a contractor shall not provide false information in order to influence a procurement proceeding, including the award of a procurement contract;
  - (ii) avoid offering or giving a favor either directly or indirectly;
  - (iii) not to engage in collusion to monopolize procurement processes and to establish bid prices at uncompetitive levels, which prevents the promotion of a free, transparent, open, and competitive procurement system.

- (2) Bidders who offers or give bribes or who engage in preparation of fraudulent documents in connection with procurement are subject to prosecution under the Law.
- (3) Entity shall notify the PPU and other legal enforcement authorities; the non-acceptance of a bid from bidder who offers [to give], or gives a benefit.
- (4) The contractor shall not further contract an awarded contract to another person.

**Article 70: Debarment of Bidders**

- (1) A bidder shall not be excluded from participation in a procurement process except for:
  - (i) providing false information in its bid, or in a procurement proceeding;
  - (ii) collusion between the bidders or a bidder and procurement officials concerning the bidding documents;
  - (iii) improper interference in the participation of competing bidders;
  - (iv) misconduct relating to the submission of bids, including, corruption, collusion, price fixing, a pattern of under-pricing of bids, and breach of confidentiality, and any other misconduct referred to in provisions of Article 69 of this Law;
  - (v) previous record of violation in the procurement contract;
  - (vi) conviction to a punishment for a violation of a procurement contract or subcontract; or
  - (vii) conviction to a punishment for a crime related to business or professional activities.
- (2) The PPU may exclude a bidder or a contractor, based on the circumstances mentioned in paragraph (1) of the Article from participation to procurement proceedings, for a minimum period of one (1) year to a maximum period of five (5) years after the performance of the following:
  - (i) a notice to the violator bidder;
  - (ii) consultation with the related entity to clarify and prove the facts of the case;
  - (iii) providing proper opportunity to the bidder to respond to the proposed actions;
  - (iv) providing grounds to contest the decision taken.

**Article 71: Right to Review**

A bidder that has suffered damage due to the violation of the Law is entitled to seek review by submitting a written application for review identifying the specific decision, act, or failure to act alleged to violate the procurement legislation

**Article 72: Review Procedures**

- (1) The PPU shall establish an Administrative Review Committee composed of experts for the purposes of conducting administrative review of applications and related appeals.
- (2) The detailed appeal and review procedures shall be as prescribed by PPU.

### **Article 73: Co-operation with Oversight Authorities**

All entities, officials, other organizations and persons involved in procurement shall provide full co-operation to the PPU, and other authorities exercising monitoring and supervisory jurisdiction over procurement pursuant to Law.

## **CHAPTER VIII: FUNCTIONS OF PROCURMENT ENTITIES**

### **Article 74: Function of the Procurement Office**

- (1) The functions of Procurement office shall include:
  - (i) providing and regulating procurement plan;
  - (ii) preparation of tendering announcement, requests, bidding and other documents related to procurement proceedings; publication and distribution of such documents when required;
  - (iii) receipt of bids, and preparation of contract award recommendations for the procurement committee and award authority;
  - (iv) preparation of procurement contract documents in accordance with the provisions of this Law;
  - (v) performance of secretariat services for the respective Procurement Committee;
  - (vi) facilitations in order to implement Article 8 of this Law;
  - (vii) oversee implementation of procurement contracts provided that it is not carried out by end-user;
  - (viii) assessment of the quantity and quality of the procured goods, works and services;
  - (ix) any other duties created by this Law.
- (2) The PPU may facilitate professional education requirements for the staff of Procurement Offices.
- (3) Entities may establish Procurement boards for subdivisions of the entity.
- (4) The procuring entity may, after obtaining the approval of the competent authority, designate one or more persons to perform the functions of procurement for small value procurement, as provided for in procedures.

### **Article 75: Functions and Authorities of the Procurement Committee**

Procurement Committee shall be appointed on the proposal of the procuring entity and approval of the award authority and have following functions and authorities:

- (i) verifying proper procurement planning and preparation of procurement proceedings;
- (ii) approving the proposed invitations, notices, requests, and other documents related to procurement proceeding;
- (iii) Conducting the opening of the Bids;
- (iv) reviewing and evaluating reports and submitting comments regarding contract awards;

- (v) rejecting unsuccessful bids and proposing contract award recommendations within its level of authority;
- (vi) forwarding recommendations for contract modifications to higher award authorities;
- (vii) discharging any other duties or functions.

**Article 76: Members of the Procurement Committee**

- (1) Procurement Committee shall be composed of a minimum of three members, who shall satisfy any requirements for certification of credentials as required by the PPU under Article 81(1)(xi).
- (2) No person responsible for reviewing the work of a Procurement Committee, or who is a member of award authority, shall be eligible to be appointed member to that Committee.

**Article 77: Special Procurement Commission**

- (1) The approval of the Special Procurement Commission is required for procurement contract awards that exceed the level of authority of award authorities. The Committee shall be composed of the Minister of Justice, the Minister of Finance, and the Minister of Economy. The chairman of the Commission shall be the Minister of Finance. The Ministry of Finance shall prepare and regulate its rules of procedure which may not be inconsistent with this Law.
- (2) The Special Procurement Commission shall review submitted contracts for approval and provide a decision of approval or rejection within maximum twenty-one (21) working days; otherwise the contract shall be considered approved.
- (3) In the case of municipality, state owned enterprises and companies, the functions of the Commission shall be performed by the relevant authorities pursuant to the relevant legislative document.

**Article 78: Contract Management**

A Contract Management Office shall be established within the Ministry of Finance to regulate and coordinate [*insejam*] the management of the State's contracts included at the level of Special Procurement Commission's authority.

The Contract Management Office functions are regulated by the procedure approved by Special Procurement Commission.

### **Article 79: Management of Procurement of Common-Use Items**

The Government may designate a special agency to procure the goods or services commonly used by the procuring entities.

### **Article 80: Procurement Policy Unit**

- (1) A “Procurement Policy Unit” (PPU) shall be established within the Ministry of Finance for policy and professional development, and as a performance monitoring organ in the field of procurement.
- (2) The PPU shall report to the Minister of Finance and government on its executions.
- (3) The Procurement Policy Unit functions shall be regulated by Ministry of Finance in accordance with separate procedures.

### **Article 81: Functions of the Procurement Policy Unit**

- (1) The procurement policy unit shall have the following duties and authorities:
  - (i) monitor and supervise procurement proceedings to ascertain efficiency and compliance with this Law;
  - (ii) collection of data or reports and the review of procurement records and files;
  - (iii) propose improvements in procurement practices to accomplish the purposes of this Law;
  - (iv) in consultation with relevant circles prepare, organize and approve procedures, measures and standard bidding documents;
  - (v) assess the procurement needs and capacity of procuring entities;
  - (vi) to debar bidders, in accordance with Article 70 of this Law;
  - (vii) to refer violations of this Law to the relevant authorities for prosecution;
  - (viii) to carry out economic studies on procurement, comparisons, and future projections, so as to collect information to provide reports;
  - (ix) to determine policy for and to facilitate the use of information technology in Procurement, including, [for example,] establishing of websites and data bases related [to Procurement];
  - (x) to implement measures aimed at developing human resources and professionalism for Procurement, including recruitment and training programs, and providing certification of the credentials of members of Procurement Committees and procurement officers;
  - (xi) to issue circulars for integrating executions of procurements;
  - (xii) to annually review and propose any revisions to the threshold limits for award authority;
  - (xiii) coordination of any other functions specified in the Procedures.
- (2) The PPU shall not consider contract award recommendations, or act as an award authority.
- (3) The exercise by the PPU of monitoring and oversight functions shall not prevent any oversight or audit functions by other authorized entities.



### **Article 82: Setting and Updating Thresholds Limits for Award Authority**

- (1) The levels of authority of each award authority may be amended on PPU recommendation, and the approval of the Special Procurement Commission.
- (2) In reviewing the thresholds, the PPU shall:
  - (i) Consult with relevant authorities, including budget and supervisory authorities;
  - (ii) Consider the need to safeguard public funds, the need for efficiency in the procurement matters, and the capacity of entities and award authorities.
- (3) Revised thresholds shall be included in the annual Budget Procedures under the provisions of Article 35 of the PFEML and circulated by the PPU to all entities, and the public by posting on its website and publication through other mass media outlets.

### **Article 83: Regulating Supply Management of Goods**

Supplies of goods shall be managed to prevent waste and loss, to assure continuous availability of supplies, and to obtain a fair return of value upon disposal of surplus supplies.

### **Article 84: Functions of the Head of Procurement Office Concerning Supplied Goods**

- (1) The head of a Procurement Office shall have the following duties and authorities concerning supplied goods:
  - (i) appoint store-keeping person(s) responsible for the storage, distribution, organization, maintenance, and assignment of supplies for their required purposes, according to the procedures provided by Article 10 of this Law;
  - (ii) ensure that the members of the store-keeping department and the Inspection Committee perform their duties to ensure sound stock and inventory practices;
  - (iii) supervise and control of property and inventories;
  - (iv) be financially liable for any financial loss incurred through [his or her] failure to meet the duty related responsibilities.
- (2) All employees of entities are personally responsible for the proper use and care of State property in their custody or subject to their control.

### **Article 85: Verification**

- (1) The entity may appoint an Inspection Committee for the purpose of assuring quantitative and qualitative procurement performance.
- (2) The entity or other person involved in the procurement shall verify that the delivered goods, works or services conform to the requirements of the procurement contract. If goods, works or services do not conform to the requirements of the procurement contract the responsible entity or person shall report on the variance to the relevant authority.
- (3) Entities shall, either separately or jointly, establish inspection and testing facilities based on circumstances.
- (4) The entity may appoint a special Technical Committee, for inspection, where

appropriate to inspect and accept the performance under the contract.

- (5) The internal auditor, supervising engineer or inspection and receipt committee shall report regularly on their procurement activities to the entity for inspection and testing of the procuring entity, in accordance with procedures.

#### **Article 86: Receipt of Goods**

The Inspection Committee shall document the receipt and acceptance or rejection of goods and shall provide a copy of the receipt voucher both to the contractor, as notification of acceptance or rejection of the goods, and to the warehouse keeper. Maintenance and inventory tracking of goods shall be carried out in accordance with the relevant legislative document.

#### **Article 87: Warehousing**

- (1) The Government may establish one or more warehouses to:
  - (i) store goods required by all entities;
  - (ii) store durable supplies in excess of entities' current needs;
  - (iii) store materials required for crises and emergencies, in accordance with the procedures;
  - (iv) manage stock levels according to historical use and projected needs.
- (2) Warehouse facilities shall carry out procedures pursuant to the provisions of Article 10 for recording and documenting the receipt and transfer of goods, and providing reports of receipts, transfers, and inventories to the authorities.
- (3) Warehouses are responsible for providing safe storage suitable to the types of goods, and keeping the goods ready for delivery upon request.

#### **Article 88: Disposal of Surplus Property**

- (1) The entity in agreement with Ministry of Finance may sell or lease movable and immovable properties in excess of an entity's needs and after making sure they are not needed by other entities, in accordance with the provisions of this Law and other relevant rules.
- (2) Immovable property is sold or leased at market prices through auction by participation of authorized representatives of Ministry of Finance and [of the concerned] Municipality.
- (3) Movable property is sold by auction or other method, whichever is most advantageous to the State.
- (4) When the likely expense of the property sale included in paragraphs 2 and 3 of this Article exceeds the price that could be received from the sale, the entity may, upon the recommendation of the relevant Procurement Committee confirmed by Procurement Policy Unit, destroy or otherwise dispose of the property in accordance with procedures. A record of the decision, the report of the entity and the disposal action taken shall be submitted promptly to the Ministry of Finance.

- (5) The Ministry of Finance will assess the funds obtained from the sale and lease of properties.

**Article 89: Report of Surplus Property**

- (1) Entities shall report to the Ministry of Finance on the quantity and description of surplus property and shall recommend, on a confidential basis, the price that they desire to receive from disposition of such goods. The report shall be provided to other entities to determine whether any such goods would meet their needs. Educational entities must be specially notified of surplus computer equipment and the provision of transport of such equipment by the entity disposing of it.
- (2) A budget entry shall be made in accordance with Article 49(3) of the PFEML for goods transferred among entities.

**CHAPTER IX: RESPONSIBILITY OF AWARD AUTHORITY AND SPECIAL PROCUREMENT COMMISSION**

**Article 90: Approval of Contracts**

- (1) All contracts shall be approved by award authority considering the threshold limit in accordance with the provisions of Article 91.
- (2) When a contract award would exceed award authority’s threshold limits, the award authority must confirm contract award recommendation before submitting it to the Special Procurement Commission.

**Article 91: Threshold Limits for Award Authority**

- (1) The Award authority in approving contracts mentioned in the provisions of Article 90(1) has the following authority:

**Threshold Limits**

Procurement Method	Approval Authority of Minister		
	Goods	Works	Services
	Afs.		
<i>(i)National Open Tendering</i>	20,000,000	100,000,000	20,000,000
<i>(ii)International Open Tendering</i>	40,000,000	200,000,000	40,000,000
<i>(iii)National Restricted Tendering</i>	8,000,000	16,000,000	8,000,000
<i>(iv)International Restricted Tendering</i>	16,000,000	32,000,000	16,000,000

<i>(v) National Single Source Procurement</i>	<b>5,000,000</b>	<b>25,000,000</b>	<b>5,000,000</b>
<i>(vi) International Single Source Procurement</i>	<b>10,000,000</b>	<b>50,000,000</b>	<b>10,000,000</b>
<i>(vii) Request for Proposals for Consultancy Services National and International</i>			<b>40,000,000</b>
<i>(viii) Request for Quotation</i>	<b>500,000</b>	<b>500,000</b>	<b>500,000</b>

- (2) Award Authority may partially or in full delegate the powers set up in Article 91(1) delegated to them to secondary units, Deputy Ministers and Directors of the relevant departments.

### **Article 92: Approval Authority for Special Procurement Commission**

Where the monetary value of supply and procurement of Goods, Works and Services exceeds the thresholds limits set by Article 91 of this Law, the contracts shall be approved by the Special Procurement Commission.

## **CHAPTER X: FINAL PROVISIONS**

### **Article 93: Interim Procurement Arrangements**

- (1) The government may establish interim procurement arrangements pending the development of effective expenditure management and the full capacity of procuring entities to implement this Law. Interim procurement arrangements include designation of a special agency which shall provide procurement facilitation to the entities and opportunities for capacity development of officers in the procuring entities.
- (2) If a gradual decentralization program is established, lower thresholds for each award authority than those set out in Article 90 of this Law may be established for any procuring entity, depending upon its own procurement capacity.
- (3) Interim procurement arrangements established under paragraphs (1) and (2) of this Article shall cease to be applicable within:
- (i) two (2) years from the entry into force of this Law in the case of central Government entities;
  - (ii) three (3) years from the entry into force of this Law in the case of provincial, district and municipal entities and branches.

### **Article 94: Penalties and Compensation**

- (1) Any person who by violating this Law, either gains for himself or others or causes a loss to an entity, is liable for payment of penalties and compensation, as determined by

the authorized court, under this Article, as well as punishment in accordance with the Law. The quantity of penalty shall be determined keeping into account the gains obtained by the person or the losses incurred to the entity.

**Article 95: Legislative Materials**

- (1) The PPU may enact special procedures and measures for better implementation of this Law.
- (2) The PPU may issue guidelines concerning the general interpretation and application of this Law and relevant procedures. Guidelines and standard bidding documents shall be issued to all state entities and institutions, when required.

**Article 96: Effectiveness**

This Law is effective upon signature and shall be published in the Official Gazette. On the effective date of this Law, the Procurement Law published in number 865 of the Official Gazette dated 3/8/1384, and any other provisions that conflict with this Law, are nullified.

## **ANNEX: DOCUMENTATION FOR PROCUREMENT**

- (1) The documentation required to be generated in the course of a request for quotations proceeding and other procurement procedures shall include the following:
- (a) "Purchase Requisition": the document prepared, in accordance with Article 12, in order to initiate a procurement process and which shall include at least a brief description of the goods, works or services required, when they are required, an estimate of the cost and an approval to proceed from the appropriate authority and a unique procurement reference number.
  - (b) "Request for Quotations document": the document issued to bidders to invite competitive quotations under the request for quotations method of procurement and shall include at least instructions on the conduct of the procurement process, a description of the goods, works or services required and a statement of the terms and conditions applicable to any resulting contract.
  - (c) "Pro forma Invoice": a document produced by a bidder to provide a price quotation to a procuring entity, in the event that the procuring entity does not provide the form on which bidders are to submit their quotations.
  - (d) "Business Registration Document": the document or documents issued by the competent authorities in the bidder's country as evidence of a bidder's establishment, incorporation or registration as a business entity; that bidders may be required to furnish, in accordance with the provisions of Article 19 of this Law.
  - (e) "Tax Clearance Certificate": the document or documents issued by the competent authorities in the bidder's country as evidence that the bidder has fulfilled its obligations to pay taxes and social security contributions; that bidders may be required to furnish in accordance with the provisions of Article 19 of this Law.
  - (f) "Invoice": the document produced by a contractor to request payment for goods, works or services provided to a procuring entity and including at least the followings:
    - the contractor's name and address;
    - tax identification number;
    - a unique invoice number;
    - the contract reference number;
    - a description of the goods, works or services to which the invoice is relating, the date and location of delivery of the goods, or completion of the works or services;
    - the unit and total prices of the goods, works or services.
  - (g) "Delivery Note": the document produced by a contractor and signed by an authorized representative of a procuring entity, as evidence that the goods required under a contract have been received by the procuring entity and shall include:
    - the name and address of the contractor;
    - a description of the goods delivered and the quantities;
    - the date and location of delivery;
    - the name of the procuring Entity;
    - the name and signature of the entity's representative receiving the goods.

- (h) "Goods Received Note": the document issued by the procurement office to record the surplus goods added to the inventory of the warehouse
- (i) "Payment voucher": the document prepared by the procuring entity as an instruction to make a payment to a contractor and shall include at least:
- the name and address of the contractor;
  - number of the invoice for payment;
  - money (Afs. or currency);
  - the method and date for payment; and
  - The name and signature of the person authorizing the payment.