

**The Draft H.P. Public Procurement Bill has been amended incorporating the comments and suggestions received from various stakeholders. The Final draft is again put on the website to seek comments and suggestions from all the stakeholders which may be sent at the following address:**

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## **THE DRAFT H.P. PUBLIC PROCUREMENT BILL, 2010**

### **Preamble**

The procurement for goods in the State is being carried out under the Store Purchase Rules as incorporated in the Appendix 10 of HPFR Vol-II as amended upto 14/3/2000. These Rules are called "Procedure and Rules for the purchase of Stores by all Departments and Offices of Govt. of Himachal Pradesh." The procurement of Works is being carried out under the PWD Manual, CPWD Manual, Guidelines issued by the Ministry of Road Transport and Highways (MORTH) or any other donor Agency. It has been felt that there is need for standard procurement procedure supported by the procurement reforms such as e-Government Procurement (e-GP) so as to render the process of procurement of goods, works and services by Procurement Entities transparent and more efficient by streamlining the procedure in inviting, processing and finalisation of tenders.

This Act is intended to streamline procedures in Public Procurement and also ensure transparency and accountability in public procurement.

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## **A BILL**

*entitled*

### **H.P. PUBLIC PROCUREMENT BILL, 2010**

An Act to provide for the basic principles and procedures to be applied in and to regulate the public procurement of goods, works, consultant services and matters connected therewith and incidental thereto:

Whereas to maximize economy and efficiency in public procurement for obtaining best value for public expenditures;

And whereas to promote economic development including capacity building in the field of public procurement and development of local industries;

And whereas to promote competition and fostering participation in public procurement proceedings by qualified suppliers, contractors and consultants;

And whereas to provide equal access without discrimination to all eligible and qualified providers of goods, works and consultant services and fair and equitable treatment to all bidders;

And whereas to promote integrity, fairness, accountability and public confidence in the public procurement process;

And whereas to achieve transparency in the procedures, processes and decisions relating to public procurement.

Now, therefore, it is expedient to provide for a Public Procurement Law to regulate the public procurement of goods, works, consultant services and matters connected therewith and incidental thereto.

Be it enacted by the H.P. State Legislature in the \_\_\_\_\_ year of the Republic of India as follows:-

	<b>CHAPTER I</b>
	<b>GENERAL PROVISIONS</b>
<i>Short title, extent and commencement</i>	<p>1. (1) This Act may be called as the H.P. Public Procurement Act, 2010.</p> <p>(2) It extends to the whole of the State of Himachal Pradesh.</p> <p>(3) The Act shall come into force on such date as the Government, may by notification appoint.</p>
<i>Definitions</i>	2. In this Act, unless the context, otherwise requires:-
a)	“Applicant” means a person who applies to become pre-qualified in response to an Invitation for Pre-qualification or to be considered for enlistment as a potential Tenderer for the purposes of the Restricted Tendering Method or to be short-listed in response to a request for Expressions of Interest.
b)	“Approving Authority” means the authority which decides on award of a procurement contract under the Delegation(s) of Financial Powers or an authority/officer authorised by the Head of a PPE under such delegation to take decision on award of procurement contract.
c)	“Bidder” or “Tenderer” means any person, firm, organization or company that submits bid to take part in procurement proceedings;
d)	Central Purchase Management Unit (CPMU) means the State Level Procurement Organisation constituted under Section 6(1).
e)	Controller of Stores(COS) means the Head of CPMU constituted under section 6(1).
f)	"Competent Authority" means, in respect of the power to be exercised under this Act, the Governor or such other authority to which the power is delegated by or under this Act, H.P. Financial Rules, 2009, Manual of Works, Accounts Codes and Treasury Rules as applicable in the State of Himachal Pradesh or any other general or special orders issued by the Government.
g)	“Concession contract” means works or service contract under which the consideration given by the Public Procuring Entity consists of or includes the right to exploit the works or or services to be provided under the contract.
h)	“Conflict of interest” means any situation where personal or business interests of any supplier, contractor or consultant in

	a public procurement proceedings may adversely affect the interests of a Public Procuring Entity in achieving best value for money, transparency, fairness and equitable treatment of tenderers.
i)	“Contractor” means a person under contract with the Public Procuring Entity for the execution of works/physical services.
j)	“Coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person in any manner to influence improperly the actions of a party;
k)	“Collusive practice” means an arrangement between two or more persons designed to achieve an improper purpose, including to influence improperly the actions of another person;
m)	“Consultant” means a person under contract with the Public Procuring Entity for providing intellectual or professional services.
n)	“Corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly of anything of value to influence improperly the actions of another person in the procurement process or contract execution;
o)	“Delegation of financial powers” means the orders regarding delegation of financial authority, issued by the Govt. from time to time relating to the conduct of public procurement or sub-delegation of financial powers under such delegation.
p)	“Earnest Money Deposit” or “Bid Security” means monetary guarantee furnished by a tenderer along with its tender.
q)	“Force Account” means any construction work to be carried out by a Public Procuring Entity using its own manpower and equipment.
r)	“Framework contract” means a contractual arrangement between one or more Public Procuring Entities and one or more suppliers which allows the procuring entities to procure goods that are needed continuously or repeatedly at an agreed price over an agreed period of time, through the placement of a number of orders;
s)	“Fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial or other benefit or to avoid an obligation;
t)	“Goods” means raw materials, products, equipment and other

	physical objects of every kind and description, whether in solid, liquid or gaseous form, electricity, intangible assets and intellectual property, software development as well as services incidental to the supply of the goods if the value of the services does not exceed the value of the goods themselves;
u)	"Government" means the Govt. of Himachal Pradesh or any Administrative Department thereof;
v)	"Head of Public Procuring Entity" means the Secretary of the Govt. Department, Head or the Chief Executive Officer of the Directorate or Organisation or by what ever designation called, an autonomous or semi- autonomous body or a Corporation.
w)	"In writing" means any communication written by hand or machine duly signed and includes properly authorized messages by facsimile or electronic mail;
x)	"Limited Tendering Method" means procurement of goods or works by inviting tenders from limited number of qualified suppliers or contractors from whom the goods and related services or works and physical services are known to be available.
y)	" Low value procurement" means a procurement activity or initiative where the total amount of expenditure incurred on the consolidated purchase is of a pecuniary value as may be prescribed.
z)	"Medium enterprise" means an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause (iii) of clause (b) of sub-section(1) of section of Micro, Small and Medium Enterprises Development Act, 2006;
aa)	"Micro enterprise" means an enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7 of Micro, Small and Medium Enterprises Development Act, 2006;
ab)	"Notice Inviting Tenders (NIT)" means invitation for Bids through advertisement containing details of the requirement.
ac)	"Open Tendering Method" means procurement of goods or works or services by inviting tenders from large number of qualified suppliers or contractors or consultants by the issue

	of advertisement.
ad)	“Person” means any physical or juridical entity or individuals or a firm, company or an organisation, whether incorporated or not.
ae)	“Post-qualification” means a process undertaken by a Public Procuring Entity at the end of the tender evaluation stage to check that the successful bidder meets the qualification on the basis of which it was pre-qualified and qualification requirements set out in the tender document.
af)	“Pre-qualification” means a pre-tendering selection process by which an applicant is invited by a Public Procuring Entity to show through documents or otherwise, that s/he is capable of meeting the requirements of a specific future tender.
ag)	"Prescribed" means prescribed by rules made under this Act.
ah)	“Proposal” means a submission of an offer by a bidder in writing for the provision of intellectual and professional services that is presented to a Public Procurement Entity in response to a Request for Proposal (RFP).
ai)	“Public Procurement Entity” means any Government Department, a State Public Sector Undertaking (PSU), Local Authority or Board, Body or Corporation established by or under any law and owned or controlled by the Government, and any other body or authority owned or controlled by the Government;
aj)	“Public funds” are funds provided to Public Procuring Entities by the Government or revenues generated by statutory bodies or Public Sector Undertakings(PSUs) or aid or grants or credits placed at the disposal of Public Procuring Entities through the Government by the Donor Agencies.
ak)	"Public procurement " means buying, purchasing, renting, leasing or otherwise acquiring any goods or works or services from domestic or foreign suppliers by a Public Procuring Entity spending public funds.
al)	"Procurement contract" means any licence or permit or other concession or authority issued by a Public Procuring Entity or entered into between a Public Procuring Entity and a supplier, contractor or consultant, resulting from procurement proceedings for carrying out works or for the supply of goods

	or services;
<i>am)</i>	Procurement Management Unit (PMU) means a cell at the Public Procurement Entity level for the management of public procurement constituted under section 6(4).
<i>an)</i>	“Quality” means the quality of goods, works or services;
<i>ao)</i>	“Quotation” means the offer with price received in writing from the tenderers for the procurement of standardized goods or works subject to pecuniary limitations as may be prescribed;
<i>ap)</i>	“Responsive” means qualified for consideration on the basis of evaluation criteria as specified in the tender documents or in the Request for Proposal (RFP) document;
<i>aq)</i>	“Security Deposit” or “Performance Security” means monetary guarantee furnished by the successful tenderer for the performance of the contract concluded with it.
<i>ar)</i>	<p>“Services” means any of the following categories of services:</p> <p>(i) ‘related services’ are generally linked directly to a supply of goods and if the value of such services does not exceed the value of goods, these shall form an inseparable part of the goods.</p> <p>(ii) ‘physical services’ are those generally linked directly to works and if value of such services does not exceed the value of works, these shall form an inseparable part of works.</p> <p>(iii) ‘Intellectual and professional services’ are those services which provide output of advisory, design and know-how transfer nature rendered by the Consultants.</p>
<i>as)</i>	“Shortlist” means a list of applicants considered suitable by Public Procuring Entity for submitting proposals for intellectual and professional services following the evaluation of applications.
<i>au)</i>	“Small enterprise” means an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7 of Micro, Small and Medium Enterprises Development Act, 2006;
<i>av)</i>	“State” means the State of Himachal Pradesh.

<i>aw)</i>	"Supplier" means a person under contract with a Public Procuring Entity to supply goods or works or services. The word "contractor" and "consultant" are synonymous with the word "supplier" depending on the object of procurement. The word supplier relates to a Goods Contract; the word contractor relates to a Works Contract and the word consultant relates to an intellectual and professional Services Contract.
<i>ax)</i>	"Technical Evaluation Committee (TEC)" means a Committee constituted under section 9(1) of the Act for the examination and evaluation of tenders for the procurement of goods and works. The Committee constituted for the evaluation of proposals for the procurement of Intellectual and Professional services will be called "Proposal Evaluation Committee (PEC)";
<i>ay)</i>	"Tender" means a bid or an offer or proposal or quotation made by a supplier, contractor or consultant in response to a request by a Public Procuring Entity;
<i>az)</i>	'Tender Document" means the set of papers detailing the schedule of works, calendar of events, requirement of goods and services, technical specifications, procurement criteria and such other particulars, as may be prescribed for evaluation and comparison of tenders.
<i>ba)</i>	"Tender Opening Committee (TOC)" means a Committee constituted under section 8(1) of the Act for the opening of tenders for the procurement of goods and works. The Committee constituted for the evaluation of proposals for the procurement of Intellectual and Professional services will be called "Proposal Opening Committee (POC)";
<i>bb)</i>	'Works' means the execution including associated design services, of works related to construction, reconstruction, repair or maintenance or renovation of a building or structure or any construction works such as forestry & horticultural plantation works, soil conservation works like check dams, check walls, water harvesting structures, minor irrigation works, highways, site preparation, excavation, installation of equipment and material, decoration, including physical services incidental to the works, provided the value of the physical services does not exceed the value of the works.;

<i>Standard Abbreviations</i>	(3) Standard abbreviations as listed below have been used in this Act.
COS	Controller of Stores
CPMU	Central Purchase Management Unit
DGS&D	Directorate General of Supplies & Disposals
EOI	Expression of Interest
IFB	Invitation for Bids
NIT	Notice inviting Tender
NAC	Non Availability Certificate
PPE	Public Procuring Entity
PEC	Proposal Evaluation Committee
POC	Proposal Opening Committee
PSU	Public Sector Undertaking
TEC	Technical Evaluation Committee
TOC	Technical Opening Committee

<i>Scope and Application</i>	(4.) This Act applies to all procurement carried out by public procuring entities, including procurement of all goods, works and services funded out of public funds, subject to section 5.
<i>Exceptions applicability to</i>	(5.) The provisions of this Act shall not apply to procurement of goods, works and services under the following circumstances :- (a) During the period of natural calamity or emergency or disaster declared by the Government in relation to procurement of goods works and services as notified. (b) If the provisions of any agreement signed by the State Govt. or Government of India with one or more countries or International Organization(s) comes into conflict with any of the provisions of this Act, the provisions of that agreement shall prevail over this Act. (c) In relation to procurement of goods, works and services specified by the Govt. in respect of the projects funded by International Financial Agencies and wholly or partially by the Govt. (d) in respect of specific procurements as may be notified by the Government from time to time.

<b>CHAPTER II</b>	
<b>ORGANISATION FOR PUBLIC PROCUREMENT</b>	
<i>Organization for public procurement</i>	<p>6. (1.) At the State level, the Central Organisation for policy formulation, co-ordination and monitoring of the public procurement process as well as finalization of framework contracts will be Central Purchase Management Unit (CPMU) headed by the Controller of Stores. The functions of CPMU may be prescribed.</p> <p>(2) At the PPE level, organisation for planning, procurement, co-ordination, monitoring etc. shall be Purchase Management Unit (PMU). The functions of PMU may be prescribed.</p>
<i>Preparation of cost estimate</i>	<p>7. (1) A PPE will prepare cost estimates including revisions thereof, for procurement of goods, works and services as prescribed.</p> <p>Provided that a cost estimate shall not be required for procurement of goods, works and services upto a pecuniary limit as may be prescribed.</p>
<i>Tender/Proposal Opening Committee</i>	<p>8. (1.) For the purpose of opening tenders or proposals the Head of PPE or any other person authorized, will constitute a Tender Opening Committee (TOC) or Proposal Opening Committee (POC) whose constitution and functions may be prescribed.</p>
<i>Technical Evaluation Committee.</i>	<p>9.(1) For the purpose of examination and evaluation of tenders the Head of PPE or any other person authorized, will constitute a Tender Evaluation Committee (TEC) or Proposal Evaluation Committee (PEC) whose constitution and functions may be prescribed.</p>
<b>CHAPTER III</b>	
<b>PRINCIPLES OF PUBLIC PROCUREMENT</b>	
<i>Procurement under the Act</i>	<p>10. (1) The delegation of financial powers in PPEs for procurement of good, works and services will be as prescribed by the Govt. from time to time.</p> <p>(2.) No PPE will procure goods, works or services except as provided under the provisions of this Act.</p>
<i>Procurement Preference Policy</i>	<p>11. (1) For facilitating promotion and development of micro, small, medium and large enterprises, the State Government may, by order, notify preference policies in respect of procurement of goods and services, produced and provided by these enterprises.</p> <p>(2). The State Government may also provide procurement preference to its PSUs, Boards and its aided institutions.</p>

<i>Records of procurement</i>	12. (1) All PPEs will maintain records of their respective procurement proceedings along with all associated documentation as may be prescribed for a minimum period of three years.
<i>Rules concerning description of goods, works and services</i>	13. (1) To the extent possible, specifications, plans, drawings, designs and requirements or descriptions of goods, public works or services shall be based on the relevant technical and quality characteristics and performance of the goods, public works or services to be procured. There shall be no requirement of or reference to a particular brand, trademark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, public works or services to be procured and provided that words such as "or equivalent" are included. (2) The details on matters covered under Sub-section (1) may be prescribed.
<i>Tender or bidding documents and bid submission</i>	14. (1) All PPEs shall have to prepare the bidding documents prior to invitation to bid. The tender documents shall follow the format of the standard tender documents in English or Hindi language as may be prescribed. (2) The procedure for procuring of bidding documents from PPEs, bid or proposal submission, clarifications on bidding documents, modification and withdrawal of bids may be prescribed.
<i>Opening of bids</i>	15.(1) A PPE will arrange for the opening of bids by the TOC or POC as the case may be, at the time and place indicated in the bidding documents and if the same is extended or on the date time and venue as may be prescribed. The procedure for bid or proposal opening may be prescribed.
<i>Negotiations</i>	16. (1) The process of negotiations with the lowest evaluated responsive bidder for the procurement of goods or works or services by PPEs may be prescribed.
<i>Approval of contract award and signing of contract</i>	17.(1) The procedure for approval of bids or proposals by PPEs for the procurement of goods, works and services may be prescribed.
<i>Performance Security</i>	18.(1) The amount of performance security, the manner of its submission by the successful bidders to PPEs and validity period may be prescribed.

	<b>CHAPTER-III</b>
	<b>Participation in procurement process</b>
<i>Non-discrimination</i>	19. (1) No PPE shall, except as otherwise prescribed by the Govt. restrain a bidder from participation in the public procurement on the basis of colour, nationality or race.
<i>Conflict of Interest</i>	20. (1) A bidder who prepares the specifications or bidding documents for the procurement contract or supervises the execution of a procurement contract, including any affiliate of such a bidder shall not participate in bidding for such procurement contract. (2) The provision under Sub-section (1) shall not apply to the bidders which are performing the supplier's obligations under a turnkey or design and build contract.
<i>Qualifications of Bidders and their registration</i>	21. (1) The qualifications to be considered for pre-qualification, bidding and for participating in public will be as may be prescribed.  (2) Eligible bidders may be registered by the CPMU or the PPEs to establish reliable source of suppliers, contractors and consultants for the procurement of goods, works and services. The fee, period of validity and the procedure for such registration may be prescribed.  (3) The facilities to be provided to the Micro, Small and Medium Enterprises registered with CPMU or PPEs or DG S&D or NSIC may be prescribed.
	<b>CHAPTER- IV</b>
	<b>Professional misconduct, Conduct and Debarment of bidders.</b>
<i>Professional misconduct, offences.</i>	22.(1.) No public servant employed in a PPE in the procurement of goods or works or services under this Act, shall undertake or attempt to undertake any procurement in contravention of provisions of this Act.  (2.) A public servant acting in contravention of Sub-section(1) shall be guilty of misconduct under the service Rules as applicable to such public servant and appropriate departmental or criminal proceedings may be initiated against him.
<i>Conduct and debarment of bidders</i>	23. (1) A bidder shall not engage in or abet coercive, corrupt or fraudulent practices including the offering or giving, directly or

	<p>indirectly, of improper inducements, the misrepresentation of facts in order to influence a public procurement process or the execution of a contract.</p> <p>(2) Any bidder acting in contravention of Sub-section(1) will be liable to be debarred generally or specifically to participate in public procurement proceedings for a period of three years or as may be prescribed. In addition, appropriate action under the criminal law may also be initiated against him.</p>
	<b>CHAPTER V</b>
	<b>METHODS OF PROCUREMENT FOR GOODS, WORKS AND SERVICES</b>
<i>Open Tendering Method for the procurement of goods, works and services.</i>	<p>24(1.) Except as other-wise provided under this Act, public procurement shall be done by means of open advertised bidding proceedings for goods and works and by competitive RFP in case of intellectual and professional services to which equal access shall be provided to all eligible and qualified bidders.</p> <p>(2) If following the provisions of this Act, a PPE uses a method of procurement other than advertised open bidding it shall record the grounds for that procurement method.</p>
<i>Application of other tendering methods for the procurement of goods and works.</i>	<p>25. (1) The PPEs may use any of the following methods other than the one mentioned under Section (24).</p> <p><b>(I) Limited Tendering method (Restricted bidding)</b> The Limited Tendering method may be used in the following cases namely:</p> <ol style="list-style-type: none"> <li>i) Goods and works by reason of their specialized nature are available from a limited number of suppliers.</li> <li>ii) The procurement of goods and works upto a financial limit as may be prescribed.</li> </ol> <p><b>(II) Single Tender System</b></p> <p>Procurement from a single source may be resorted to in the following circumstances:</p> <ol style="list-style-type: none"> <li>(i) When for technical or proprietary reasons, only a sole tenderer is available for the supply of goods and works.</li> <li>(ii) For additional procurement of goods and works by the original supplier as may be prescribed.</li> </ol> <p><b>(III) Request for sealed quotations:-</b> (1) The request for sealed quotations method shall only be used for the procurement of readily available</p>

	<p>commercially standard goods not specially manufactured to the particular specifications and small works where the estimated value of the procurement does not exceed the prescribed limit.</p> <p>(2) Procurement under Sub-section (1) shall be made for reasons to be recorded in writing.</p>
<i>Framework contracts for the procurement of goods.</i>	26. (1) The CPMU shall conclude framework contracts with the suppliers of goods as may be prescribed.
	<b>CHAPTER-V</b>
	<b>PROCESSING OF PROCUREMENT</b>
	<b>Part-I Advertisement</b>
<i>Advertisement</i>	<p>27.(1) A PPE shall prepare advertisements for pre-qualifications, Notice inviting Tenders(NIT) or Invitation for Bids (IFB), requests for Expressions of Interest (EOI) for intellectual and professional services in English or Hindi language in the format and following procedure as prescribed.</p> <p>(2.) The procedure for issuing of advertisement under Sub-section (1) may be prescribed.</p>
	<b>Part-II Procurement of goods and works.</b>
<i>Pre-qualification of bidders for the procurement of goods and works.</i>	<p>28.(1) A PPE, prior to the floating of tenders or invitation for bids in procurement may engage in pre-qualification of bidders in case of goods and works of technically complex nature.</p> <p>(2) A PPE may also carry out post qualification in the procurement of goods and works.</p>
<i>Notice inviting Tender or invitation for bids</i>	29.(1) The information to be provided in the NIT or IFB issued under section 27(1) for the procurement of goods or works shall be as may be prescribed.
<i>Examination and evaluation of bids</i>	<p>30. (1). All bids except those not selected for processing shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents.</p> <p>(2) A bid once opened in accordance with the prescribed procedure shall be subject to only those rules and policies that were in force at the time of issue of notice for invitation of bids.</p> <p>(3) The procedure to be followed in the examination of evaluation of bids may be prescribed.</p>

	<b>Part-III Procurement of Intellectual and Professional services</b>
<i>Application of RFP method</i>	31. (1) Intellectual and professional services shall be procured by RFP method as prescribed and the criteria and the procedure to be followed shall be prescribed.
	<b>CHAPTER-VI</b>
	<b>OTHER PROCUREMENT METHODS</b>
<i>Provisions relating to Concession contracts</i>	32. (1) A PPE may enter into a concession contract with a person for the procurement of works and services through a Build, Own, Operate (BOO), Build, Operate, Transfer (BOT), Build, Own, Operate, Transfer (BOOT) etc. model. (2) The structure of the model and nature of participation of the PPE may be prescribed.
	<b>CHAPTER IX</b>
	<b>CONTRACT IMPLEMENTATION</b>
<i>Contents of procurement contract</i>	33. (1) In making procurement other than of low-value procurement, the PPE shall conclude a procurement contract in accordance with this Chapter. (2) The procurement contract under Sub-section (1) shall include the set of conditions which are attached to the bidding documents or request for proposals. The conditions to be included in the procurement contract may be prescribed.
<i>Entry into force of the procurement contract</i>	34. A procurement contract shall come into force: (a) In case of low value contracts, no formal signing of a contract is required and it shall come into force from the date the notice of the acceptance of the bid or purchase order has been given to the bidder whose bid has been accepted. (b) In all other cases of procurement contract a written contract will be signed applicable from the date on which the signatures of both the PPE and the successful bidder (s) are affixed to it. Such affixing of signatures shall take place within a reasonable time:  Provided that after signing of the procurement contract, where the coming into force of it is contingent upon fulfillment of certain conditions, the contract shall take effect from the date from which such fulfillment takes place.
<i>Contract amendments</i>	35. For reasons to be recorded in writing, a procurement contract may be amended as prescribed by written consent of both the parties subject to non-alteration of the basic nature or scope of the work.

<i>Mechanism for dispute settlement:</i>	<p>36. (1) A procurement contract shall provide the mechanism for resolution of disputes arising between the parties to the contract.</p> <p>(2) The parties to the contract shall use their best efforts to settle amicably all disputes arising out of or in connection with the Contract or its interpretation.</p> <p>(3) In relation to the supply of goods, works and services, the procurement contract may provide that any dispute between parties to contract will 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 Indian Arbitration and Reconciliation Act, 1996(Act No. 26 of 1996.)</p>
	<b>CHAPTER-X</b>
	<b>COMPLAINTS AND REVIEW</b>
<i>Review</i>	<p>37. (1) An applicant or bidder who claims to have suffered or who is likely to suffer, loss or injury due to a breach of a duty imposed on the PPE under this Act and the rules issued pursuant thereto may seek review in accordance with this chapter.</p> <p>(2) An application for review shall not be entertained unless it is accompanied by the non-refundable fee as may be prescribed and identifies the specific act or omission.</p>
<i>Review by Head of PPE</i>	<p>38. (1) Prior to the entry into force of a procurement contract, application for review shall be made in writing, to the Head of the PPE.</p> <p>(2) The conditions under which such application for review will be entertained by the Head of PPE may be prescribed.</p>
<i>Review by Govt.</i>	<p>39. (1) If the Head of the PPE does not issue a decision within the prescribed time limit or if the complainant is not satisfied with the decision of the Head of the PPE, the s/he may apply to the Govt. for 2<sup>nd</sup> review.</p> <p>(2) The conditions under which such application for 2<sup>nd</sup> review will be entertained by the Govt. may be prescribed.</p>

	<b>CHAPTER XI</b>
	<b>USE OF ELECTRONIC PROCESSING SYSTEM IN THE PUBLIC PROCUREMENT ETC.</b>
<i>E-Government Procurement</i>	40. (1) Notwithstanding anything contained in this Act, Government for efficient delivery of services to the public may, by publication of a notice in the official Gazette, provide a mechanism for inviting a proposal for pre-qualification, IFB, EOI and RFP for services through the electronic means as provided under the Information Technology Act,2008.
	<b>CHAPTER XII</b>
	<b>MISC. PROVISIONS</b>
<i>Immunity for action taken in good faith:</i>	41. No suit or other legal proceeding shall lie against the Government or any officer of authority empowered to exercise powers or perform the functions under this Act in respect of anything which is in good faith done or intended to be done under this Act.
<i>Power to make rules:</i>	42. The Government may, by notification in the official Gazette, make rules outlining detailed procedures, competent authorities, financial authorities, thresholds, and so forth to fulfil the objectives and to carry out the provisions of this Act.
<i>Powers to remove difficulties</i>	43. For the purpose of removing any complications in giving effect to any provisions of this Act on account of any ambiguities occurring in such provision, the Government may, by notification published in the Official Gazette, issue a direction clarifying or interpreting such provision in keeping with other provisions, as to how such matters shall be dealt with.
<i>Repeal and saving.</i>	44. (1) All rules, regulations, orders, notifications, departmental codes, manuals , bye- laws, Official Memoranda , circulars or any other order made or issued before the commencement of this Act and in force on the date of such commencement providing for or relating to any of the above matters for the furtherance of which this Act is enacted shall continue to be in force and effective as if they are made under the corresponding provisions of this Act, to the extent they are not inconsistent with the provisions of the Act and unless and until superseded by anything done or any action taken or any rule, notification or order, is made under this Act. (2) All proceedings for public procurement entered into before the commencement of this Act in accordance with the existing rules, regulations and guidelines shall be disposed off in accordance with the provisions of repealed laws as if they have not been repealed.

