

## **The Public Procurement Act, 2007 (2063)**

### Date of Authentication and Publication

14 January 2007 (30 Poush 2063)

### Amending Acts:

1.	The Act Amending Some Nepal Acts, 2016 (2072)	25 February 2016 (2072.11.13)
2.	The Public Procurement (First Amendment) Act, 2016 (2073)	14 July 2016 (2073.3.30)
3.	The Act Amending Some Nepal Acts for Making Compatible with the Constitution of Nepal, 2019 (2075)	13 March 2019 (2075.11.29)

Act Number 36 of the year 2006/2007 (2063)

### An Act Made to Provide for Public Procurement

### Preamble:

Whereas, it is expedient to make legal provisions in order to make the procedures, processes and decisions relating to public procurement more open, transparent, objective and reliable, and achieve the maximum returns of public expenditures in an economical and rational manner, by promoting competition, fairness, honesty, accountability and reliability in the public procurement processes, and ensure good governance by enhancing the procurement management capacity of the public entities in procuring, or causing to be procured, construction works and procuring goods, consultancy

services and other services by such entities and by ensuring the equal opportunity for producers, sellers, suppliers, construction entrepreneurs or service providers to participate in public procurement processes without any discrimination;

Now, therefore, be this Act enacted by the House of Representatives, in the first year of the issuance of the Declaration of the House of Representatives, 2063 (2007).

## Chapter- 1

### Preliminary

1. Short title and commencement: (1) This Act may be cited as the “Public Procurement Act, 2063 (2007).”
  - (2) It shall commence forthwith.
2. Definitions: Unless the subject or the context otherwise requires, in this Act,-
  - (a) “Procurement” means the acquisition by any public entity of any goods, consultancy services or other services, or executing or causing to be executed any construction works by such an entity, in accordance with this Act;
  - (b) “Public entity” means the following body:
    - (1) A constitutional organ or body, court, Ministry, secretariat, commission, department of the Government of Nepal or Provincial Government<sup>1</sup> or any other governmental entity or office thereunder,
    - (2) A corporation, company, bank or board which is owned or controlled wholly or in majority by the

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<sup>1</sup> Amended by the Act Amending Some Nepal Acts for Making Compatible with the Constitution of Nepal, 2019 (2075).

Government of Nepal or Provincial Government<sup>2</sup> or commission, corporation, authority, undertaking, enterprise, board, center, council and other corporate body of similar nature which is established at the public level or formed by the Government of Nepal or Provincial Government<sup>3</sup>, in accordance with the prevailing law,

- (3) A university, college, research center and other academic or educational institute of similar nature which is operated by the Government of Nepal or Provincial Government<sup>4</sup> or receives grants wholly or in majority from the Government of Nepal,
- (4)<sup>5</sup> Local Level,
- (5) A development board which is formed under the Development Board Act, 2013 (1956),
- (6) A body which is operated through a loan or grant by the Government of Nepal or Provincial Government<sup>6</sup>, and

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<sup>2</sup> Amended by the Act Amending Some Nepal Acts for Making Compatible with the Constitution of Nepal, 2019 (2075).

<sup>3</sup> Amended by the Act Amending Some Nepal Acts for Making Compatible with the Constitution of Nepal, 2019 (2075).

<sup>4</sup> Amended by the Act Amending Some Nepal Acts for Making Compatible with the Constitution of Nepal, 2019 (2075).

<sup>5</sup> Amended by the Act Amending Some Nepal Acts, 2015 (2072), and having commenced on 22 May 2017 (2074.2.8).

<sup>6</sup> Amended by the Act Amending Some Nepal Acts for Making Compatible with the Constitution of Nepal, 2019 (2075).

- (7) Such other body as specified to be a public entity by the Government of Nepal or Provincial Government,<sup>7</sup> by a notification in the Nepal Gazette.
- (c) “Goods” means goods of any kind, whether movable or immovable, living or non-living<sup>8</sup>, and this term also includes services incidental to the supply of such goods.
- (d) “construction works” means any construction works such as preparation of a construction site, excavation, erection, building, installation or decoration of equipment or goods which is associated with the construction, reconstruction, demolition, maintenance or renovation of any structure or works, and this term also includes services incidental to works such as mapping, laboratory testing, satellite photography and seismic investigations.
- (e) “Consultancy services” means any study, research, survey, design, drawing, supervision, training, testing, software development service or other intellectual or professional service of similar nature.
- (f) “Other services” means the act of hiring motor vehicles, equipment or goods, carriage or maintenance of goods.
- (g) “Bid” means a document specifying the price, proposal or price rate which is submitted by a bidder in such form as specified by a public entity in pursuance of a notice published by such an entity for procurement.

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<sup>7</sup> Amended by the Act Amending Some Nepal Acts for Making Compatible with the Constitution of Nepal, 2019 (2075).

<sup>8</sup> Inserted by the First Amendment.

- (h) “Bidder” means a person, firm, body or company that submits or may submit a bid to participate in the procurement proceeding.
- (i) “Bidding documents” means a document which is prepared by the concerned public entity making invitation to bid for submission by bidders by filling up or preparing price or proposal or rate in such a document, and this term also includes instructions to bidders, specifications, drawing, design, terms of reference, schedule of work, evaluation criteria, bill of quantities, conditions of contract and similar other documents.
- (j) “Procurement contract” means a procurement agreement entered into between a public entity and a supplier, construction entrepreneur, consultant or service provider pursuant to Section 52.
- (k) “Public Procurement Monitoring Office” means the Public Procurement Monitoring Office established pursuant to Section 64.
- (l) "Competent authority" means the authority empowered under this Act or the rules framed hereunder to approve procurement related act.
- (m) “Guarantee” means the retention money or earnest money furnished as a security pending the completion of any work, and this term also includes the bid security or performance security or such amount furnished for security as required to be so furnished for any other reason.
- (n) “Special circumstance” means a circumstance resulted from a natural or divine calamity such as drought, no

rainfall, deluge, earthquake, flood, landslide and fire and from an epidemic<sup>9</sup> or unforeseen or unexpected special circumstance, and this term also includes a circumstance such as war or internal conflict.

- (o)<sup>10</sup> “Local Level” means Rural Municipality, Municipality or District Assembly constituted under the prevailing law.
- (p) “Joint venture” means the act of doing any work jointly by two or more companies or firms with joint or several liabilities.
- (q) “Agent” means a person, firm or company that takes agency of any native or foreign person, firm or company.
- (r) “One level higher authority” means, with respect to a governmental body, in the case of the chief of office, the chief of a regional office where there is such a regional office and the head of the concerned department where there is no regional office, in the case of regional chief, the head of the concerned department, in the case of the head of department, the secretary of the concerned Ministry, secretariat or commission, in the case of a secretary, the concerned departmental Minister or Minister of State, and in the case of a secretary or administrative chief of a constitutional organ or body, the chief of the concerned constitutional organ or body, and in the case of any other public entity, the chief of the body that is one level higher than the procuring entity and the board of directors or

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<sup>9</sup> Inserted by the First Amendment.

<sup>10</sup> Amended by the Act Amending Some Nepal Acts, 2015 (2072), and having commenced on 21 May 2017 (2074.2.8).

similar other body of such a public entity where there is no such body.

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

3. Procurement to be made in accordance with this Act: (1) A public body shall, in making a procurement, make such procurement by complying with the procedures set forth in this Act.

(1a)<sup>11</sup> A body which is registered in accordance with the prevailing law shall, in making procurement through government funds, make such procurement, to that extent, by complying with the procedures set forth in this Act.

(2) Any procurement made in a manner to be contrary to sub-sections (1) and (1a)<sup>12</sup> shall be void and invalid.

## Chapter-2

### Provisions Relating to Responsibility for Procurement and Procurement

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<sup>11</sup> Inserted by the First Amendment.

<sup>12</sup> Amended by the First Amendment.

## Methods

4. Description of goods, construction works and services to be prepared:

(1) Prior to procuring any goods, construction work or service, a public body shall prepare a specification, plan, drawing, design, special requirement or other descriptions thereof.

(2) The descriptions referred to in sub-section (1) shall be prepared on the basis of relevant objective technical and quality characteristics and functions of such goods, work or service.

(3) In preparing the descriptions pursuant to sub-sections (1) and (2), a particular brand, trademark, name, patent, design, type, origin or producer's name cannot be specified except where there is no other way of specifying clearly in an intelligible manner the characteristics of the goods, construction work or service.

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

(4) While specifying in the bidding documents or pre-qualification documents the descriptions of the technical or quality characteristics of the goods or works or other services and requirements or symbols or terminologies relating to testing, marking, packaging, labeling or conformity certificate, no descriptions, requirements, symbols or terminologies can be so specified as to be irrelevant to the function of such goods, construction work or service, to cause a hindrance in any manner to participation by qualified bidders in the procurement process or to limit competition without justification.

5. Cost estimate to be prepared: (1) A public body shall prepare a cost estimate as prescribed for any procurement whatsoever.

Provided that a cost estimate shall not be required for making procurement valued up to one hundred thousand rupees, except for construction works.<sup>13</sup>

(2) A public entity shall update, as prescribed, the cost estimate prepared pursuant to sub-section (1).

5A.<sup>14</sup> Approval: (1) A public entity shall approve as prescribed the descriptions referred to in Section 4 and the cost estimate referred to in Section 5.

(2) Except where it is required to amend the descriptions referred to in Section 4 and the cost estimate referred to in Section 5 for such a special reason as prescribed, if, in amending the design or cost estimate once approved, such an amendment differs by more than twenty-five percent of the original cost estimate figure or the act of procurement gets affected for the reason that the defective design has been made or abnormal cost estimate has been prepared, the official who has prepared, examined or approved such a design or cost estimate and the consultant who has been involved in that act shall be liable to action under the prevailing law.

6. Procurement plan to be prepared: A public entity shall, in making procurement valued at an amount exceeding the prescribed limit, prepare a master procurement plan and yearly procurement plan, as prescribed.

6A.<sup>15</sup> Standing list to be prepared: (1) Each public entity shall, for procurement to be made pursuant to sub-section (6) of Section 30, clause (a) of sub-section (1) of Section 41, and Section 46, prepare separate lists of suppliers, construction entrepreneurs, consultants, non-

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<sup>13</sup> Amended by the First Amendment.

<sup>14</sup> Inserted by the First Amendment.

<sup>15</sup> Inserted by the First Amendment.

governmental organizations or service providers according to the nature of the procurement, and on the basis of the qualification referred to in sub-section (2) of Section 10.

(2) A supplier, construction entrepreneur, consultant, non-governmental organization or service provider who wishes to be included in the list referred to in sub-section (1) shall make an application, along with the document as prescribed, to the concerned public entity.

(3) It shall be the responsibility of the concerned public entity to update the standing list referred to in sub-section (1).

(4) The concerned supplier, construction entrepreneur, consultant, non-government organization or service provider shall, for the purpose of sub-section (3), submit an application to the concerned public entity each year.

(5) Other provisions relating to the standing list shall be as prescribed.

7. Responsibility for procurement activity: (1)<sup>16</sup> The chief of the concerned public entity shall be responsible for executing, or causing to be executed, the procurement activity by fulfilling the procedures referred to in this Act.

(2) A public entity shall, in executing the procurement activity pursuant to sub-section (1), get it to be executed by an employee who has such qualification as may be determined by the Public Procurement Monitoring Office and has knowledge or training on procurement.

(3) A public entity shall, for the performance of the following functions, establish a separate division, section or unit on the basis of

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<sup>16</sup> Amended by the First Amendment.

workload and nature of procurement activity and designate the procurement official<sup>17</sup>:

- (a) To prepare procurement plans,
- (b) To prepare, as required, prequalification documents, bidding documents and contract documents in such a way that they do not generally differ substantially from<sup>18</sup> the standard bidding documents, standard prequalification documents and standard contract documents prepared by the Public Procurement Monitoring Office,
- (c) To so prepare documents relating to proposals for consultancy services as required that they do not generally differ substantially from<sup>19</sup> the standard request for proposal prepared by the Public Procurement Monitoring Office,
- (d) To publicly publish the notices on procurement,
- (e) To issue pre-qualification documents, bidding documents or to forward documents relating to proposals for consultancy service,
- (f) To receive and safely retain pre-qualification proposals, bids or proposals for consultancy service,
- (g) To submit the pre-qualification proposals, bids or proposals for consultancy service to the evaluation committee for their evaluation and submit the evaluated bids for acceptance,

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<sup>17</sup> Amended by the First Amendment.

<sup>18</sup> Amended by the First Amendment.

<sup>19</sup> Amended by the First Amendment.

- (h) To give notice of acceptance of the pre-qualification proposals, bids or proposals for consultancy service,
- (i) To obtain, examine and safely retain the performance guarantee,
- (j) To examine, or cause to be examined, the quality of the procured goods, construction works or services,
- (k) To provide such information and documents as demanded by the Public Procurement Monitoring Office, and
- (l) To perform such other functions as may be prescribed.

(4) In performing, or causing to be performed, the functions referred to in sub-section (3), the authority who is entrusted with the responsibility of the procurement division, section or unit<sup>20</sup> shall perform such functions with the approval of the chief of the concerned public entity.

(5)<sup>21</sup> The functions, duties and powers of the chief of the procurement division, section or unit established pursuant to sub-section (3) shall be as prescribed.

(6)<sup>22</sup> It shall be the duty of the chief of the concerned public entity to ensure that the act is completed within the specified time by regularly making, or causing to be made, supervision, monitoring and quality control in order to implement, or cause to be implemented, the procurement contract made in accordance with this Act.

8. Procurement method to be selected: (1) A public entity shall make procurement by applying any of the following methods based on such conditions and purchase price as prescribed:

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<sup>20</sup> Amended by the First Amendment.

<sup>21</sup> Inserted by the First Amendment.

<sup>22</sup> Inserted by the First Amendment.

(a) For the procurement of goods, works or other services:

- (1) Inviting international open bidding,
- (2) Inviting national open bidding,
- (3) Inviting sealed quotations,
- (4) Direct procurement,
- (5) Through participation of users' committee or beneficiary group,
- (6) Through a forced account,
- (7)<sup>23</sup> Lump sum piece rate method,

Explanation: For the purposes of this sub-clause, “lump sum piece rate method” means the method of submitting bids by undertaking to perform the act by what percent less or more than the quantity of each unit and total figure of the cost estimate.

- (8)<sup>24</sup> Method of procurement from the producer or authorized seller at the specified rate (catalogue shopping),

Explanation: For the purposes of this sub-clause, “method of procurement from the producer or authorized seller at the specified rate (catalogue shopping)” means the method of procurement through competition in the price specified by the company producing goods of equivalent level after the company which manufactures any goods has published the selling price set by it on the basis of

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<sup>23</sup> Inserted by the First Amendment.

<sup>24</sup> Inserted by the First Amendment.

the characteristics, quality and facilities of the product in the website or brochure of the concerned company.

- (9)<sup>25</sup> Method of procurement where limited bidders participate (limited tendering),

Explanation: For the purposes of this sub-clause, “method of procurement where limited bidders participate (limited tendering)” means the method of procurement through competition between such producers, suppliers or service providers only if there are limited producers, suppliers or service providers in the procurement of any goods, construction works or services.

- (10)<sup>26</sup> Method of procurement whereby the new one is procured by returning the old one (buy-back method),

Explanation: For the purposes of this sub-clause, “method of procurement whereby the new one is procured by returning the old one (buy-back method),” means the method whereby, in the case of those goods or machinery, equipment which become of no use after a certain period of time or cannot be auctioned or stored or used from the point of view of public health and environment, the new one is procured by returning such goods or machineries, equipment, upon making their valuation as

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<sup>25</sup> Inserted by the First Amendment.

<sup>26</sup> Inserted by the First Amendment.

prescribed, to the concerned manufacturer or supplier.

(b) For the procurement of consultancy services:

(1) By requesting competitive proposals,

(2) Through direct negotiations.

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

(3)<sup>27</sup> The provisions relating to the methods of procurement referred to in sub-clauses (7), (8), (9) and (10) of clause (a) of sub-section (1) shall be as prescribed.

9. Procurement to be made by invitation to open bid: Except as otherwise provided for in this Act, a public entity making procurement shall, to the extent possible, make such procurement by making invitation to open bid, and provide equal opportunity to qualified bidders to participate in such procurement process without any discrimination.

10. Qualification of bidder or proponent: (1) A bidder or proponent shall meet the following qualification in order to get a procurement contract:

(a) In the case of the bidder, the qualification criteria set forth in the bidding documents or where act of prequalification has been conducted for procurement, the qualification criteria set forth in the prequalification documents, and

(b) In the case of the proponent, the qualification criteria set forth in the documents relating to proposals.

(2) In setting forth the qualification criteria in the bidding documents or documents relating to proposals pursuant to sub-section

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<sup>27</sup> Inserted by the First Amendment.

(1), professional and technical qualifications, availability of equipment, past performance, after-sale service arrangements, availability of spare parts, legal capacity, financial resources and condition, punishment for having committed any professional offense and similar other criteria may be set forth.

(3) In setting forth the criteria pursuant to sub-section (2), no provision may be so made as to allow only those construction entrepreneurs, suppliers, consultants or service providers who belong to any particular class to participate in, or to exclude those construction entrepreneurs, suppliers, consultants or service providers belonging to any particular class from participating in, the procurement process.

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

(5)<sup>28</sup> Notwithstanding anything contained elsewhere in this Section, no qualification requirement shall be prescribed for the procurement of a construction work the cost estimate of which is less than twenty million rupees, except for a construction work which is so ascertained by the public entity as requiring the qualification.

(6) If the statement concerning the qualifications which has been submitted by a bidder or proponent is found to be factually false or materially incomplete, the public entity may disqualify such a bidder or proponent at any time.

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<sup>28</sup> Amended by the First Amendment.

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

### Chapter-3

#### Provisions Relating to Bidding

11. Processes and stages of bidding: (1) In making procurement through bidding, an invitation to bid may be made by following the process as follows:
  - (a) Making invitation to open bids by determining the prequalification,
  - (b) Making invitation to open bids without determining the prequalification.(2) The open bid may be invited in a single stage or in two stages.
  - (3) In making an invitation to bid in the circumstance set forth in sub-section (1) of Section 28, it may be made in two stages.
12. Prequalification to be determined: (1) In order to execute such works as determined from time to time by the Public Procurement Monitoring Office to be large and complex or to procure goods of high value such as industrial plants or to identify qualified bidders, the public entity shall, prior to making invitation to bids, prepare the prequalification documents and publicly invite to proposals for the determination of the prequalification.
  - (2) The public entity may, if it so deems appropriate, also determine the prequalification for other procurement as well.
  - (3) The prequalification documents referred to in sub-section (1) or (2) shall set forth the qualification criteria required for the

prequalification and the method for the preparation, and the manner for the submission, of proposal.

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

(5) The selection of the qualified applicants shall be made on the basis of the qualification criteria set forth in sub-section (3). The public entity shall publicly publish a list of the applicants so selected and send the same to all the applicants.

(6) If any applicant whose prequalification proposal is rejected requests for the information of the reason for the rejection of his or her proposal within thirty days of the notice being given pursuant to sub-section (5), the concerned public entity shall give such information to him or her.

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

13. Bidding documents to be prepared: (1) The public entity shall, prior to an invitation to bid, prepare the bidding documents.

(2) The bidding documents referred to in sub-section (1) shall contain the following matters:

(a) The nature of procurement, time required for the procurement and technical specifications thereof,

(b) Where bids are invited without determining the prequalification, the criteria for qualification of bidders referred to in Section 10,

(c) Where there is a provision that site visit needed to be made, information relating thereto,

- (d) If any pre-bid meeting has to be held, information relating to such a meeting,
- (e) Instructions for the preparation and submission of bids, the place for the submission of bids, the deadline for the submission of bids and the place, date and time for the opening of bids,
- (f) Component of price, the currency or currencies in which the bid price may be stated, the currency to be used for the comparison of bids and the basis of the related exchange rate and date thereof,
- (g) The criteria and methodology for the evaluation of bids and the selection of bidder,
- (h) Where preference is to be given to domestic goods and local construction entrepreneurs, provision relating thereto,
- (i) Where the procurement of any goods or works is to be made by making separate lots and packages, such lots and packages and the method of evaluation thereof,
- (j) Where alternative proposals to the technical specifications are also invited, the method of evaluation of such alternatives,
- (k) Where a bid can be submitted even only for a portion of the goods, works or services to be procured, details of such portion or portions,
- (l) The validity period of a bid,
- (m) The amount, type, acceptable form and validity period of the security required to be furnished for bid, performance or other necessary matter,

- (n) Where the bid security is required, the matter that the period of that security shall exceed by thirty days to the validity period of bid,
- (n1)<sup>29</sup> The matter that the performance guarantee shall be furnished in a sum to be set by five percent of the bid price of the bidder if such a bid price is up to fifteen percent below the cost estimate and by fifty percent of the amount by which less price is quoted if such a bid price is below more than fifteen percent of the cost estimate, in addition to five percent of the bid price,
- (n2)<sup>30</sup> Financial and technical details submitted by the bidder to any public entity while submitting the bid or entering into the contract,
- (n3)<sup>31</sup> Where the bidder has commenced any work upon entering into contract with any public entity, such an entity, description of the work, amount of the contract and description of work progress,
- (n4)<sup>32</sup> The matter that where the bidder has commenced the work in accordance with clause (n3), the technical capacity of the bidder which is in use in any public entity shall not be counted for additional work to the extent that the technical capacity of the bidder is required for that entity, as mentioned in the documents referred to in clause (b) of sub-section (3) of Section 7,

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<sup>29</sup> Inserted by the First Amendment.

<sup>30</sup> Inserted by the First Amendment.

<sup>31</sup> Inserted by the First Amendment.

<sup>32</sup> Inserted by the First Amendment.

- (o) The terms and conditions of the procurement contract referred to in Section 52 and the manner of the entry into force of that contract,
- (p) Information that bids shall not be processed in the event of conflict of interest or information relating to the legal action that is taken in the event of fraud or corruption,
- (q) Provision that any bidder may make an application, for review, against any error or decision made by the public entity in carrying out bid actions,
- (r) Provision that the documents proving technical capacity and financial proposal (bid price) have to be submitted in one envelope, and
- (s) Such other matters so determined by the Public Procurement Monitoring Office as to be mentioned in the prequalification documents or bidding documents.

(3) The public entity shall provide the bidding documents by collecting such fees as prescribed to any person, firm, body or company that requests for the bidding documents, and where prequalification is required to participate in the procurement proceeding, to any person, firm, body or company that has been pre-qualified and requests for such documents, in accordance with the notice for invitation to bids.

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

(2) The notice referred to in sub-section (1) shall be placed in the website of the entity or that of the Public Procurement Monitoring Office, in the case of a central level public entity, and in the case of a

district level public entity, such a notice may be placed in the website of that entity or that of the Public Procurement Monitoring Office.

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

- (a) The name and address of the public entity inviting bid,
- (b) The nature of and time limit for the act of procurement and the place for the delivery of the goods to be supplied, the services to be delivered and the work to be executed,
- (c) Where the bid security is required, the amount and validity period thereof,
- (d) Where the bid security is required, the validity period of the bid,
- (e) The place where and the manner how the bidding documents or prequalification documents can be obtained, and the fees payable therefor,
- (f) The place, manner, the last date and time for the submission or forwarding of the bidding documents or prequalification documents,
- (g) The place, date and time for the opening of bids, and the matter that the bidders or their authorized agents will be invited to attend the opening of bid, and
- (h) Such other matters as prescribed.

(4) In publishing the notice referred to in sub-section (1), there shall be given a period of at least thirty days in the case of a notice of invitation to national bidding or prequalification proposals, and of at least forty-five days in the case of a notice of invitation to international bidding or prequalification proposals.

(4a)<sup>33</sup> Where it is required to make re-invitation to bid or prequalification proposal because no bid or prequalification proposal is submitted within the period given for the submission of bid or prequalification proposal pursuant to sub-section (4) except for the circumstance referred to sub-section (5) of Section 26, or though submitted, no bid or proposal is substantially responsive, the public entity may make re-invitation to bid or prequalification proposal by giving a period of at least fifteen days in the case of national bidding or prequalification proposals, and of at least twenty-one days in the case of international bidding or prequalification proposals, as per necessity.

(4b)<sup>34</sup> Where no bid or prequalification proposal is submitted even within the period given pursuant to sub-section (4a) or though submitted, no bid or proposal is substantially responsive, and the public entity will suffer loss or damage or any of its functions will get stopped if procurement is not made immediately, the public entity may, specifying its justification and with the approval of the one level higher authority, make procurement by making re-invitation to bid by giving a period not exceeding seven days in the case of national bidding or prequalification proposals or by selecting and following any procurement method pursuant to Section 8.

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

(6) While stating the place to which the bidding documents or prequalification documents should be submitted or sent pursuant to

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<sup>33</sup> Inserted by the First Amendment.

<sup>34</sup> Inserted by the First Amendment.

clause (f) of sub-section (3), provision shall be made so that such documents is to be submitted or sent to only one public entity.

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

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

<sup>35</sup>Provided that, in the case of procurement of a construction work through a national bidding, procurement of such work up to the prescribed cost estimate may be made by having competition between domestic bidders only.

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

(10) Where an agent has been appointed pursuant to sub-section (9), the details as prescribed in relation to the agent shall also be specified in the bid.

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

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<sup>35</sup> Amended by the First Amendment.

15. International bidding: (1) While making invitation to bid pursuant to this Act, an international bidding shall be invited in any of the following circumstances:

- (a) If the goods or construction works as requisitioned by a public entity are not available at the competitive price from more than one construction entrepreneur or supplier within the State of Nepal,
- (b) If no bid has been submitted in response to an invitation to national bidding for the procurement of goods, construction works or other services, and the same has to be procured from abroad,
- (c) If foreign goods or construction works have to be procured through the foreign assistance source pursuant to the agreement entered into with a donor party,
- (d) If it is certified by the public entity that the goods or construction works, being of complex and special nature, have to be procured through international bidding.

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

(3) The notice referred to in sub-section (2) shall be posted in the website referred to in sub-section (2) of Section 14.

16. Clarification as to unclear matter on bidding or prequalification documents: (1) Where any bidder, being unclear about any matter set forth in the bidding documents or prequalification documents, requests for clarification as to that matter within the time period set out in such documents, the public entity shall give information about such a matter

to all the bidders prior to expiration of the deadline for the submission of bids or prequalification proposals.

(2) Where the public entity makes any alteration in the information referred to in sub-section (1) and the bidding documents or prequalification documents, it shall give information relating to such alteration to all the bidders who have participated in the procurement proceeding within such time as to enable them to take into account also such alteration in submitting their bids or preparing their proposals for prequalification.

(3) Where it is necessary to give additional time to bidders for the purpose referred to in sub-section (2), the public entity may extend the deadline for the submission of bids or prequalification proposals.

17. Deadline for submission of bids or prequalification proposals: In determining the deadline and time for the submission of bids or prequalification proposals, the public entity shall so determine such a deadline and time that as not to be less than the period referred to in sub-section (4), (4a) or (4b)<sup>36</sup> of Section 14 and as to allow sufficient time for bidders to prepare or submit such bids or proposals.

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

(2) The bids which are received after the deadline referred to in sub-section (1) shall not be entertained, and such bids shall be returned unopened to the concerned bidders.

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<sup>36</sup> Amended by the First Amendment.

(3)<sup>37</sup> Notwithstanding anything contained in sub-sections (1) and (2), the method of submission of bids for the procurement through electronic communication means shall be as per the electronic procurement system approved by the Public Procurement Monitoring Office.

19. Withdrawal and modification of bid: (1)<sup>38</sup> A bidder may, prior to the expiry of the deadline for the submission of bids, except in the case of a bid to be submitted through electronic communication means, make a sealed application in advance of twenty-four hours of the expiration of such deadline for withdrawal or modification of the bid already submitted by the bidder.

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

20. Validity period of bids: (1) The validity period of bids shall be as specified in the bidding documents.

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

(3) Notwithstanding anything contained in sub-section (1), the public entity may, if so required to extend the validity period of bids after the opening of bids, extend the validity period of bids as required assigning the reason for the same.

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

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

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<sup>37</sup> Inserted by the First Amendment.

<sup>38</sup> Amended by the First Amendment.

(6) The bid security of a bidder who does not give consent pursuant to sub-section (4) shall be returned.

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

(2) The security furnished pursuant to sub-section (1) shall be forfeited in any of the following circumstances:

- (a)<sup>39</sup> If the bidder requests for modification or withdrawal of the bid after the period referred to in sub-section (1) of Section 19,
- (b) If the bidder refuses to accept the correction of any arithmetical error found in the bid,
- (c) If the selected bidder fails to enter the procurement contract in accordance with the terms and conditions set forth in the bidding documents,
- (d) If the bidder fails to furnish the performance security as set forth in the bidding documents within the time for entering into the procurement contract,
- (e) If the bidder has changed the bid price or substantive matter of the bid while providing any information in response to clarification sought by the public entity pursuant to sub-section (4) of Section 23 in the course of examination of bids.
- (f) If the bidder does any act contrary to the conduct referred to in Section 62.

(3) After the conclusion of the procurement contract referred to in Section 52, the public entity shall return the bid security of the

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<sup>39</sup> Amended by the First Amendment.

bidder who has entered the procurement contract and the bid security of those bidders whose bid security is not liable to forfeiture pursuant to sub-section (2).

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

23. Examination of bids: (1) The public entity shall submit the bids opened pursuant to Section 22 to the evaluation committee.

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

- (a) Whether the documents establishing that the bidder is qualified under law to submit the bid have been submitted or not,
- (b) Whether the bid is complete in accordance with the instructions to bidders set forth in the bidding documents or not, and whether it is signed by the bidder or by the bidder's authorized agent or not,
- (c) Where a bid security is required to be submitted along with the bid, whether the bid security of such type, period and amount as set forth in the bidding documents is accompanied with the bid or not,
- (d) Whether the bid is substantially responsive to the technical specifications set forth in the bidding documents and to the terms and conditions of procurement contract attached with the bidding documents or not.

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

(a) Whether a power of attorney for the authorized agent or local

agent of the bidder has been submitted or not,

(b) Where a joint venture agreement is necessary, whether such an agreement has been submitted or not,

(c) Whether the documents substantiating the eligibility of the bidder and of the goods mentioned by the bidder have been submitted or not,

(d) Whether the necessary documents relating to the qualifications of the bidder have been submitted or not,

(e) Where the bidding documents require the submission of a rate analysis, whether such a rate analysis has been submitted or not,

(f) Other matters as prescribed.

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

(5) The concerned bidder shall provide the information sought by the public entity pursuant to sub-section (4) to the public entity, and in providing such information, no change or alteration in the bid price or other substantial matters of the bid shall be allowed.

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

(7) While examining the qualification pursuant to sub-section (6), if the qualification of a bidder is found to be substantially lower

than the qualification which was at the prequalification stage, the bid of such a bidder shall be rejected.

(8) If, in examining the bids pursuant to this Section, any arithmetical error is found in a bid, the public entity may correct such an error, and where, in making such correction, there exists a discrepancy between the unit rate and the total amount, the unit rate shall prevail, and the total amount shall be corrected as per that rate.

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

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

24. Bids not to be entertained: No bid that has the following non-compliance shall be entertained:

- (a) The bid which is not sealed,
- (b) The bid which has not been submitted within the time frame,
- (c) The bid which has been withdrawn pursuant to Section 19,
- (d) The bid which is not in accordance with sub-section (2) of Section 23,
- (e) The bid which has been submitted by mutual collusion pursuant to sub-section (6) of Section 26,
- (f) The bid which has been cancelled pursuant to sub-section (7) of Section 23.

25. Evaluation of bids: (1) All the submitted bids other than those set aside for non-entertainment pursuant to Section 24 shall be included for evaluation.

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

(3) Where the value of minor deviations referred to in sub-section (2) exceeds fifteen percent of the bid price of the bidder, such a bid shall be deemed to be substantially non-responsive, and such a bid shall not be included for evaluation.

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

(4) Where an invitation to bid has been made after the determination of prequalification, the bids submitted by the bidders other than the pre-qualified bidders shall not be included in the evaluation to be made under sub-section (1).

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

(6) The qualification of the bidder of the bid with the lowest bid price under sub-section (4) shall be verified in order to ascertain

whether it conforms to the qualification criteria set forth in the bidding documents or not.

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

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

26. Rejection of bids or cancellation of procurement proceeding: (1) The public entity may reject all the bids or cancel the procurement proceeding in the following circumstance:

(a) If none of the bids is substantially responsive pursuant to clause (d) of sub-section (2) of Section 23,

(a1)<sup>40</sup> If the contract cannot be made with the bidder even after following the process referred to in sub-section (6) of Section 27,

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<sup>40</sup> Inserted by the First Amendment.

- (b) If the bid price of the lowest evaluated substantially responsive bid substantially exceeds the cost estimate, or
- (c) If the requisitioned goods, works, consultancy services or other services are no longer required.

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

(3) The public entity shall give a notice of the rejection of bids or cancellation of the procurement proceeding pursuant to sub-section (1), along with the reason for such rejection or cancellation, to all the bidders.

(4) Where any bidder requests, within thirty days of the communication of the notice pursuant to sub-section (3), for the grounds for the rejection of all bids or cancellation of the procurement proceeding, the public entity shall give such information to that bidder.

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

(6) Notwithstanding anything contained elsewhere in this Section, if it is proved that any bidder has submitted the bid, in mutual collusion with the bidders, such bids shall be rejected.

27. Acceptance of bid and procurement contract: (1) The public entity shall select for acceptance only the lowest evaluated substantially responsive bid in accordance with Section 25.

(2) The public entity shall, within seven days of the selection of the bid pursuant to sub-section (1), serve a notice of the intent of acceptance of his or her bid to the concerned bidder. Information of the name, address of the bidder whose bid has been so selected and the price of the bid shall also be given to the other bidders as well.

(3) If no bidder makes an application pursuant to Section 47 within the period of seven days of the notice referred to in sub-section (2), the bid of the bidder selected pursuant to sub-section (1) shall be accepted and a notice shall be given to the bidder to furnish the performance guarantee to enter into the procurement contract within fifteen days.

(4) The concerned bidder shall furnish the performance guarantee and sign the procurement contract referred to in Section 52 within the period set forth in sub-section (3). In so furnishing the performance guarantee, the bidder shall furnish the performance guarantee in a sum to be set by five percent of the bid price of the bidder if such a bid price is up to fifteen percent below the cost estimate and by fifty percent of the amount by which less price is quoted if such a bid price is below more than fifteen percent of the cost estimate, in addition to five percent of the bid price.<sup>41</sup>

(5) If the bidder fails to furnish the performance guarantee and enter into the procurement contract within the period referred to in sub-section (3), the bid security of that bidder shall be forfeited, and the bid of the other immediately next lowest evaluated substantially responsive

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<sup>41</sup> Inserted by the First Amendment.

bidder shall be accepted and the procurement contract shall be entered into.

(6) If even the bidder referred to in sub-section (5) fails to furnish the performance guarantee and execute the procurement contract, the bid of the other immediately next lowest evaluated substantially responsive bidder, respectively, shall be accepted, and a notice shall be given to that bidder for entering into the procurement contract pursuant to this Section.

(6a)<sup>42</sup> The public entity shall generally complete the act relating to the acceptance of bid and procurement contract within the bid validity period referred to in Section 20.

(7) If, within thirty days of the notice referred to in sub-section (2), any bidder whose bid has been rejected requests for the ground for the rejection of his or her bid, the public entity shall give such information to that bidder.

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

(a) If it is not feasible to define fully the technical aspects of the goods or construction work or service to be procured or the terms and conditions of the procurement contract at the time of the invitation to bid, or

(b) If, because of the complex nature of the goods, construction work or service to be procured, it is necessary for the public entity to discuss with the bidders about how to resolve the problems related to various technical aspects thereof or the procurement contract and about such

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<sup>42</sup> Inserted by the First Amendment.

technical aspects and the conditions of contract and benefits accruing therefrom.

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

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

(4) The public entity may, having regard to, *inter alia*, the discussions held pursuant to sub-section (3), carry out the following in relation to the bids received pursuant to sub-section (2):

- (a) Cancelling a proposal relating to a bid that fails to meet the basic requirements required to be met in relation to the procurement or fails to make the minimum performance or fails to complete the work within the specified period or that cannot be modified to meet such requirements or to make such performance or to complete the work within the specified period or that is not responsive due to any other weakness,
- (b) Modifying or improving the technical specifications, evaluation criteria and terms and conditions of the procurement contract in order to increase competition,

- (c) Determining the evaluation system in order to determine the appropriateness of various options submitted by the bidders.

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

(6) The second-stage bidding actions to be carried out under sub section (5) shall be carried out in accordance with the provisions contained in this Chapter, except for those provided for in this Section.

#### Chapter-4

##### Provisions Relating to Consultancy Services

29. Consultancy services may be procured: (1) A public entity may procure a consultancy service from any person, firm, organization or company in the following circumstance:

- (a) If any work cannot be performed by the human resource available in the concerned public entity, or
- (b) If the service is required to be obtained from a consultant through the source of foreign assistance in accordance with the agreement with a donor party.

(2) If it is required to procure the consultancy service referred to in sub-section (1), procurement shall be made upon fulfilling the procedures referred to in this Act.

30. Short-list to be prepared by soliciting expression of interest openly: (1) If it is required to procure a consultancy service of which cost exceeds

the prescribed amount, the public entity shall, in order to solicit the expression of interest from the persons, firms, organizations or companies who are interested in providing such consultancy services, publish a notice setting out the matters as prescribed in a newspaper of national circulation, giving a period of at least fifteen days.

(2) The notice referred to in sub-section (1) may be put on the website of the Ministry which is relevant to the public entity or of the Public Procurement Monitoring Office.

(3) International expression of interest shall be invited in the following circumstance:

- (a) To procure a consultancy service the cost of which exceeds the prescribed amount,
- (b) If the consultancy service as requisitioned by the public entity is not available at the competitive price from more than one consultant within the State of Nepal,
- (c) If no proposal has been submitted in response to an invitation to national proposal for the procurement of a consultancy service, and the service is, therefore, required to be procured from any foreign consultant, or
- (d) If it is required to obtain the service from a consultant under the source of foreign assistance by soliciting international expression of interest in accordance with the agreement with the donor party.

(4) While soliciting the expression of interest referred to in sub-section (3), a notice shall be published in English language.

(5) The public entity shall, upon evaluation of, *inter alia*, the qualification, experience and capacity of the proponents who have submitted the expression of interest pursuant to sub-section (1) or (3),

make selection of generally three to six intending proponents who can provide such consultancy service as prescribed and prepare a short-list of such proponents.

(6) If it is required to procure a consultancy service the cost of which is less than the prescribed amount, the public entity may prepare a list of the persons, firms, organizations or companies that can provide such a service, upon fulfilling the procedures as prescribed, and shall solicit proposals pursuant to Section 31 from the persons, firms, organizations or companies included in that list, upon fulfilling the procedures as prescribed.

31. Soliciting proposals: (1) After a short-list has been prepared pursuant to Section 30, the public entity shall request for proposals from the intending proponents who are included in the short list, by giving a period of at least thirty days and send the documents relating to proposal, as prescribed, to such proponents.

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

- (a) The name and address of the public entity,
- (b) The nature of the service to be procured, the time when and the place where the service is to be provided, the terms of reference of the service, the task to be completed and the expected results,
- (c) Instructions to proponents to prepare proposals,
- (d) Matters that the technical and financial proposals have to be sealed in separate envelopes, each of which has to clearly indicate the type of proposal outside it, and that both envelopes have then to be sealed in a separate

envelope, and that the subject of the required service has to be mentioned thereon,

- (e) The technical and financial evaluation weightage,
- (f) The criteria and weightage marks for the evaluation and comparison of the proposals,
- (g) Conditions of the procurement contract,
- (h) The place, date and time for the submission of proposals,
- (i) The method for the selection of proposals,
- (j) Matter that the proposals shall not be entertained in the event of conflict of interest and information relating to the legal action if fraud or corruption is committed,
- (k) Provision that a proponent may make an application for review against any error or decision made by the public entity in carrying out the proposal related actions, and
- (l) Such other matters as prescribed.

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

- (a) Experience of the consultant in the task to be performed by the consultant,
- (b) The quality of proposed methodology for the performance of task by the consultant,
- (c) The qualification of the proposed key human resource,
- (d) The provision of the transfer of knowledge and technology,

(e) In the case of an international proposal, description of the key Nepalese human resource proposed for the performance of the task.

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

(a) Quality and cost method,

(b) Quality method,

(c) Fixed budget method, or

(d) Least cost method.

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

32. Opening of proposals: (1) After the expiry of the deadline for the submission of proposals, the outer envelopes of the proposals received from the proponents shall be opened and the sealed envelopes of technical and financial proposals shall be separated.

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

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

- (4) Other provisions relating to the opening of technical proposals shall be as prescribed.
33. Evaluation of technical proposals: The technical proposals shall be evaluated in accordance with the evaluation criteria as set forth in the documents relating to proposal.
34. Opening of financial proposals: The financial proposals of only those proponents who have been qualified from the evaluation of technical proposals shall be opened as prescribed.
35. Evaluation of financial proposals: The financial proposals opened pursuant to Section 34 shall be evaluated as follows:
- (a) Where the quality and cost method is applied to select the proposal, the technical and financial proposals shall be evaluated in a combined form and the proposal of the proponent who obtains the highest marks in such evaluation shall be selected as prescribed.
  - (b) Where the quality method is applied to select the proposal, only the proposal of the proponent who obtains the highest marks in the technical proposal shall be selected.
  - (c) Where the fixed budget method is applied to select the proposal, a proposal with cost above such a budget ceiling shall be rejected, and the proposal of the proponent that obtains the highest marks in the technical proposal and is within such a budget ceiling shall be selected.
  - (d) Where the least cost method is applied to select the proposal, the proposal of the proponent having the lowest cost out of the proponents having obtained the minimum marks prescribed for being successful in the technical proposal shall be selected.

36. Rejection of proposal and cancellation of procurement proceeding: (1)

The public entity may reject all the proposals or cancel the procurement proceeding in the following circumstance:

- (a) If all the received proposals are not substantially responsive to the terms of reference,
- (b) If the cost offered by the selected proponent is substantially over the cost estimate and available budget,
- (c) If the consultancy service is not required, or
- (d) If it is proved that the proponent has submitted the proposal through mutual collusion.

Provided that the proposals of those proponents who have not colluded may be entertained.

37. Negotiations with the proponent: (1) Negotiations with the proponent selected pursuant to Section 35 may be held with regard to the matters of the terms of reference, scope of the proposed service, progress report and facilities required to be provided by the public entity.

(2) Except in the circumstance referred to in clause (b) of sub-section (1) of Section 35, negotiations with regard to the financial proposal cannot be held about the remuneration of professional experts.

Provided that negotiations may be held with regard to the expenditures of reimbursable nature.

(3) If an agreement acceptable to both the public entity and the proponent is not resulted from the negotiations held pursuant to this Section, the public entity shall negotiate successively with the proponent having obtained the next highest marks in the case of the proposal under clauses (a), (b) and (c) of sub-section (1) of Section 35 and with the proponent having the next lowest cost in the case of the proposal under clause (d).

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

(2) The Public entity shall, within seven days of the selection of the proposal pursuant to sub-section (1), give a notice of the intention of accepting the proposal to the proponent so selected and to the other short-listed proponents.

(3) If no proponent makes an application pursuant to Section 47 within seven days of the notice being given pursuant to sub-section (2), the proposal of the proponent selected pursuant to sub-section (1) shall be accepted, and that proponent shall be given a notice by giving a period of fifteen days to appear to enter into the contract.

(4) If the proponent appears within the period referred to in sub-section (1) to enter into the contract, the proponent shall enter into the contract under Section 52, and if that proponent fails to appear, the public entity shall hold negotiations pursuant to Section 37 successively with the proponent having obtained the next highest marks in the case of the proponent referred to in clauses (a), (b), and (c) of sub-section (1) of Section 35 and with the next proponent having the lowest cost in the case of clause (d) and enter into the contract referred to in Section 52 with such a proponent.

39. Other provisions relating to consultancy services: Other methods relating to the procurement of consultancy services and the process of evaluation thereof shall be as prescribed.

## Chapter-5

### Other Provisions Relating to Procurement

40. Provisions relating to sealed quotations: (1) The ceiling of the amount of the goods, construction work or other service that can be procured through sealed quotations shall be as prescribed.
- (2) Prior to inviting sealed quotations, a form of sealed quotation stating clearly the specifications, quality, quantity of the goods, construction work or other service to be procured, the terms and conditions of, and the time for, their supply, and other necessary matters shall be prepared.
- (3) In inviting sealed quotations, a notice shall be published in a national or local level newspaper by giving a period of at least fifteen days.
- (4) A sealed quotation once submitted cannot be withdrawn or amended.
- (5) The lowest evaluated sealed quotation fulfilling the terms and conditions referred to in sub-section (2) and falling within the cost estimate shall be accepted.
- (6) Other provisions relating to sealed quotations shall be as prescribed.
41. Provisions relating to direct procurement: (1) Notwithstanding anything contained elsewhere in this Act, goods or consultancy service or other service may be procured or construction work may be executed directly in the following circumstance:
- (a) Low-value procurement costing up to the prescribed amount,

- (b) If only one supplier, construction entrepreneur, consultant or service provider has the technical efficiency or capacity to fulfill the procurement requirements,
- (c) If only one supplier has the right to supply the goods to be procured and no other appropriate alternative is available,
- (d) If it is required to procure additional goods or service of proprietary nature within the prescribed limit from the existing supplier, consultant or service provider after it has been proved that if the existing supplier, consultant or service provider is changed to replace or extend the existing goods or services or the spare parts of the installed machinery, the goods or service existing in the public entity cannot be replaced or changed,
  - (d1)<sup>43</sup> If one public entity is required to make procurement from another public entity,
  - (d2)<sup>44</sup> If it is required to procure any goods or service from any international inter-governmental organization at the rate specified by that organization,
  - (d3)<sup>45</sup> If it is requirement to procure in a special circumstance,
- (e) If it is required to procure the essential construction work, goods, consultancy service or other service within the limit as prescribed which are not included in the initial contract due to failure to foresee and which are difficult to be completed by separating them from the initial contract due to technical or financial reasons, or

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<sup>43</sup> Inserted by the First Amendment.

<sup>44</sup> Inserted by the First Amendment.

<sup>45</sup> Inserted by the First Amendment.

- (f) If the service of a particular consultant having any unique qualification is immediately required for the concerned task or if there exists the indispensable reason for obtaining the service from the same consultant.

(2) Notwithstanding anything contained elsewhere in this Section, procurement to be made pursuant to clauses (b), (e) and (f) of sub-section (1) shall be made pursuant to the decision of the Government of Nepal, Council of Ministers, on the basis of the recommendation of the following committee in the case of the public entity referred to in sub-clause (1) of clause (b) of Section 2, and pursuant to the decision of the supreme executive body of that entity in the case of the other public entity:

- (a) Chief Secretary, the Government of Nepal -Coordinator
- (b) Secretary, Ministry of Finance -Member
- (c) Secretary, concerned Ministry -Member
- (d) Financial Comptroller General -Member
- (e) <sup>46</sup>.....

(3) If it is required to make direct procurement pursuant to sub-section (1), the public entity shall invite a written rate or proposal from only one supplier, construction entrepreneur, consultant or service provider after preparing written description as prescribed of the special matter concerning its requirements and quality, quantity, terms and conditions and time of supply, and may make procurement through negotiations as required.

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<sup>46</sup> Deleted by the First Amendment.

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

42. Special provision relating to ration procurement: (1) Notwithstanding anything contained elsewhere in this Act, the public entity shall, in procuring ration, following the procedures as prescribed in the following matters:
- (a) Cost estimate and approval thereof,
  - (b) Price-escalation,
  - (c) Bidder's eligibility,
  - (d) Bid security,
  - (e) Submission of bid, and
  - (f) Other matters as prescribed.
- (2) The procedures other than those mentioned in sub-section (1) shall be as provided for in this Act.
43. Provisions relating to renting house and land and obtaining service on contract: Notwithstanding anything contained elsewhere in this Act, the public entity may take a house and land on rent or obtain the prescribed services on contract by fulfilling the prescribed procedures.
44. Execution of work through users' committee or beneficiary community: If economy, quality or sustainability is increased in having a construction work executed or obtaining service related thereto from the users' committee or beneficiary community or if the main objective of the project is to generate employment and to have the beneficiary community involved, such a construction work may be executed by or such service may be obtained from a users' committee or beneficiary community in fulfilment of the procedures as prescribed.

45. Work may be, or cause to be, executed by force account: (1) Such work as repair and maintenance of ordinary nature, regular petty work or sanitation may be executed by force account or caused to be executed by a users' committee.
- (2) The procedures to be followed for executing or causing to be executed the work pursuant to sub-section (1) shall be as prescribed.
46. Work may be caused to be executed by non-governmental organizations: If promptness, effectiveness and economy are achieved in having work such as public awareness training, orientation, empowerment and main-streaming carried out by a non-governmental organization, the public entity may have such work executed or obtain such service from a non-governmental organization by following such process as prescribed.

## Chapter-6

### Provisions Relating to Review of Procurement Proceeding or Decision

47. Application may be made to the chief of public entity: (1) A bidder or proponent may make an application to the chief of the concerned public entity for review against any error or decision made by the public entity, setting out the reason for the damage the bidder will suffer or is likely to suffer from the error or failure to perform the duty required to be performed by the public entity in carrying out the procurement proceeding or making the decision.
- (2) The application to be made for review pursuant to sub-section (1) shall be limited to the actions prior to the execution of the procurement contract.
- (3) The application referred to in sub-section (1) shall be made within the period specified, if any, in this Act for making such an application and, if not so specified, within seven days from the date on

which the bidder or proponent knows that the public entity has made an error or failed to perform the duty relating to the procurement proceeding.

(4) The applicant shall state clearly in the application referred to in sub-section (1) the commission or omission of an act by the public entity that led to such error or failure to perform duty and the provision of this Act or Regulation or guidelines made thereunder that have been contravened by such a decision.

(5) No application for review received after the expiry of the period referred to in sub-section (3) shall be entertained.

(6) If, from the inquiry made into an application received pursuant to sub-section (1), it is found that an error has been made in the procurement proceeding or the public entity has failed to perform the duty required to be performed or such a decision is contrary to law, the chief of the public entity shall suspend the procurement proceeding and make a decision setting out the reason in writing, not later than five days of the receipt of the application.

(7) The decision referred to in sub-section (6) shall also state how the procurement proceeding shall further proceed on.

(8) If the application referred to in sub-section (1) is in respect of the procurement proceeding of an amount below the prescribed one, no application can be made to the review committee for review against the decision made by the chief of the public entity pursuant to sub-section (6).

48. Review committee: (1) In order to review the applications referred to in Section 49, the Government of Nepal shall constitute a public procurement review committee consisting of the following chairperson and members:

(a) One person from among the judges of the Hight Courts<sup>47</sup> or former judges of the High Courts or the persons retired from the special class post of the Government of Nepal

-Chairperson

(b) One person from among the persons retired from the gazetted first-class post of the Nepal Engineering Service of the Government of Nepal

-Member

(c) One person from among the persons having experience and expertise on public procurement

-Member

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

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

Provided that in appointing the members for the first time, one member shall be appointed for one year and the other member shall be appointed for two years.

(4) The tenure of the chairperson or member referred to in sub-section (1) may be extended for another term.

(5) The terms and conditions of service, remuneration and facilities of the chairperson or member referred to in sub-section (1) shall be as specified by the Government of Nepal.

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

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<sup>47</sup> Amended by the Act Made to Amend Some Nepal Acts, 2019 (2075).

(7) The Government of Nepal may remove the chairperson or member in the following circumstance:

- (a) If he or she commits misconduct,
- (b) If he or she fails to discharge the functions and duties of the post due to lack of performance competence or efficiency, or
- (c) If he or she is convicted by a court of a criminal offense involving moral turpitude.

49. Application may be made before the review committee: A bidder or proponent may make an application for review before the review committee in the following circumstance:

- (a) If the chief of the public entity does not make a decision on the application made before the public entity pursuant to Section 47 in respect of the procurement proceeding of the amount above the prescribed threshold within the period referred to in sub-section (6) of the same Section or if the applicant is dissatisfied with the decision made by him or her,
- (b) In the matter of the procurement contract made pursuant to Section 52.

50. Method of review: (1) A bidder or consultant who makes an application for review referred to in Section 48 before the review committee shall make such an application within seven days in the case of clause (a) of Section 49 and within a period of thirty days from the date of conclusion of such a contract in the case of clause (b) of the same Section.

(2) The review committee shall, not later than three days of the receipt of the application pursuant to subsection (1), notify, by

sending a copy of the application and of the document, if any, attached with such an application to the concerned public entity to provide information about the action taken in that respect and comments thereon.

(3) The public entity shall, not later than three days of the receipt of the notice referred to in sub-section (2), provide the review committee with information and comments related thereto.

(4) The review committee shall, not later than thirty days of the receipt of the application pursuant to sub-section (1), make a decision on the basis of the information and comments received pursuant to sub-section (3), the evidence, document submitted by the applicant along with the application and, if necessary, by hearing both the parties.

(5) In making a decision pursuant to sub-section (4), the review committee may make the decision as follows:

- (a) To dismiss the application,
- (b) If the procurement contract has not been entered into,-
  - (1) To give an order to the public entity not to commit or make an unauthorized act or decision or not to pursue the wrong procedure,
  - (2) To give an order to annul in whole or in part the unauthorized act or decision made by the public entity,
  - (3) If it is required to re-evaluate the bids or proposals due to the occurrence of any error in the evaluation thereof, to give an order for re-evaluation, citing such an error as well.

(c) If the procurement contract has already been entered into, and the review committee considers that such a contract should have been awarded to the applicant, to recommend the public entity to pay a reasonable amount to the applicant, having regard to the detriment suffered by the applicant.

(6) An applicant who makes an application for review pursuant to this Section shall furnish security as prescribed.

(7) If the application is dismissed pursuant to clause (a) of sub-section (5), the amount of such security shall be forfeited.

51. Procurement proceeding to be withheld: (1) The public entity shall, upon receipt of the notice of the application for review made pursuant to sub-section (1) of Section 50, withhold the procurement proceeding until the Review Committee makes a decision in respect of that application.

(2) Notwithstanding anything contained in sub-section (1), the procurement proceeding need not be withheld in the following circumstance:

(a) If the public entity informs the review committee proving the matter that there is an urgency to keep the procurement proceeding continuing on account of an important public interest vested in the procurement proceeding,

(b) If the review committee fails to make a decision within the period referred to in sub-section (4) of Section 50, or

(c) If the procurement contract has already been entered into.

(3) If the public entity does not withhold the procurement proceeding pursuant to clauses (a) and (b) of sub-section (2), it shall give information thereof to the review committee.

## Chapter-7

### Provisions Relating to Procurement Contract

52. Procurement contract and terms and conditions thereof: (1) In making procurement other than that of low-value one in accordance with this Act, the public entity shall enter into a procurement contract pursuant to this Section.

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

- (a) Names and addresses, telephone, fax numbers of the parties to the procurement contract and their contact persons for the implementation of the contract,
- (b) Scope of the procurement contract,
- (c) Description of the documents contained in the procurement contract and the order of their priority,
- (d) Work performance schedule,
- (e) Time for supply, time for performance or whether the term can be extended or not,
- (f) The amount of procurement contract or method for determining it,
- (g) Terms and conditions for the acceptance of goods, construction work or service,
- (h) Terms and conditions and mode of payment including payment.....<sup>48</sup> of foreign currency,

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<sup>48</sup> Deleted by the First Amendment.

- (i) Circumstance of *force majeure*,
- (j) If price adjustment can be made, provision thereof,
- (k) If the procurement contract can be amended and variation order can be issued, provision thereof,
- (l) If insurance is necessary, provision relating thereto,
- (m) Security as required,
- (n) Liquidated damages for the failure of performance within the stipulated time,
- (o) Provision concerning bonus to be given if work is completed before the stipulated period,
- (p) Circumstances in which the procurement contract may be terminated,
- (q) Provision whether sub-contracting can be made or not,
- (r) Mechanism for the settlement of disputes,
- (s) The governing law, and
- (t) Other matters as prescribed.

52A.<sup>49</sup> Provision relating to advance: (1) The public entity may, following the procurement contract, pay advance not exceeding twenty percent of the amount of the procurement contract by taking an advance bank guarantee from the supplier, construction entrepreneur or service provider.

(2) In making payment of advance pursuant to sub-section (1), the amount not exceeding half the amount of the approved advance may be paid for the first time and the remaining amount may be paid on the basis of the work progress.

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<sup>49</sup> Inserted by the First Amendment.

(3) Except in the circumstance referred to in sub-section (5) of Section 10, the amount of advance shall be payable only through a bank account opened separately for the work contracted.

(4) The supplier, construction entrepreneur or service provider shall commence the work not later than thirty days of the date of receipt of the advance for the first time.

(5) Updated details of the purpose for which the amount of advance referred to in sub-section (2) has been spent shall be provided as prescribed to the concerned public entity.

(6) If the advance paid pursuant to this Section is not found to have been used in the concerned work, the advance bank guarantee taken pursuant to sub-section (1) shall be forfeited.

(7) Other provisions relating to advance shall be as prescribed.

53. Amendment to procurement contract: A procurement contract may, except as otherwise provided for in the procurement contract, be amended by written consent of both the parties, subject to non-alteration of the basic nature or scope of the work.

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

54.<sup>50</sup> Variation order: (1) If the circumstance that could not be foreseen at the time of entering into the procurement contract arise in the course of implementation of the procurement contract, the following authority may, stating the clear reason therefor, issue a variation order in compliance with the prescribed procedures:

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<sup>50</sup> Amended by the First Amendment.

- (a) In the case of a variation not exceeding five percent, the gazetted second class or equivalent chief of the concerned public entity,
- (b) In the case of a variation not exceeding ten percent, the gazetted first class or equivalent chief of the concerned public entity,
- (c) In the case of a variation not exceeding fifteen percent, the head of department,
- (d) In the case of a variation from fifteen percent up to twenty-five percent, the secretary of the concerned Ministry or the equivalent chief of the concerned body,
- (e) In the case of a variation exceeding twenty-five percent, the Government of Nepal, Council of Ministers in respect of the public entity referred to in sub-clause (1) of clause (b) of Section 2,
- (f) In the case of a variation exceeding fifteen percent, the supreme executive body of such entity in respect of the public entity referred to in sub-clause (2) of clause (b) of Section 2.

(2) In issuing a variation order pursuant to clause (e) of subsection (1), in the case of the public body referred to in sub-clause (1) of clause (b) of Section 2, the Government of Nepal, Council of Ministers, may issue the variation order on the proposal of the concerned Ministry, along with the recommendation received from a group of experts to be formed by the concerned Ministry to make necessary inquiry into the matter, and in the case of the public body referred to in sub-clause (2) of clause (b) of Section 2, the supreme executive body of that body may issue a variation order only on the

basis of the recommendation received from a group of experts to be formed by that supreme executive body to make necessary inquiry into the matter.

(3) Notwithstanding anything contained in clauses (a) and (b) of sub-section (1), no authority that is below the authority approving the cost estimate shall issue a variation order.

(4) Notwithstanding anything contained in sub-section (1), the head of department may issue a variation order exceeding fifteen percent of the procurement the value of which does not exceed six million rupees.

55. Price adjustment in procurement contract: (1) Except as otherwise provided for in a procurement contract, if it appears necessary to make price adjustment in the course of implementation of the procurement contract the term of which exceeds twelve months,<sup>51</sup> the competent authority may make the price adjustment.

Provided that where a procurement contract has already been entered into to procure a public construction work following the invitation to national bidding, and the price of any construction materials increases or decreases unexpectedly by more than ten percent of the previous price, price adjustment may be made as prescribed, by deducting ten percent in the amount so increased or decreased.

(2) Notwithstanding anything contained in sub-section (1), price adjustment cannot be made if the work under the procurement contract has not been completed within the period specified in such a contract and thereby has taken more time on account of the delay on the part of the person whom the contract has been awarded to or if the

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<sup>51</sup> Amended by the First Amendment.

procurement contract has been entered into on the basis of lump sum contract or fixed budget.

56. Provisions relating to extension of the term of contract: (1) Provisions relating to the extension of the term of a procurement contract shall be as provided for in the concerned procurement contract.

(2) Notwithstanding anything contained in sub-section (1), if the term of a procurement contract is to be inevitably extended due to *force majeure*, failure of the public entity to make available the things required to be made available by it or other reasonable grounds, the competent authority may, on an application by the person whom the contract has been awarded to, extend the term on the prescribed grounds.

57. Payment of bills or invoices: The public entity shall, subject to the procurement contract, make payment of the bills or invoices as prescribed.

58. Mechanism for settlement of disputes: (1) Any dispute arising between the public entity and the construction entrepreneur, supplier, service provider or consultant in connection with the implementation of the procurement contract shall be settled through mutual consent.

(1a)<sup>52</sup> The procurement contract shall provide that if a dispute cannot be settled through mutual consent in accordance with sub-section (1), the dispute shall be settled by arbitration under the prevailing law.

(2)<sup>53</sup> .....

(3)<sup>54</sup> .....

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<sup>52</sup> Inserted by the First Amendment.

<sup>53</sup> Deleted by the First Amendment.

<sup>54</sup> Deleted by the First Amendment.

(4)<sup>55</sup> .....

(5)<sup>56</sup> .....

59. Termination of procurement contract and remedies: (1) A procurement contract shall specify the grounds on which the contract may be terminated.

(2) The grounds referred to in sub-section (1) may mainly be as follows:

(a) Ground that the public entity may terminate the procurement contract if the supplier, consultant, service provider or construction entrepreneur fails to perform the work in accordance with the procurement contract, fails to observe the conduct pursuant to sub-section (2) of Section 62 or misuses the advance.<sup>57</sup>

(b) Ground that the public entity may terminate the procurement contract by convenience (termination by convenience) for public interest,

(c) Ground that a supplier, consultant, service provider or construction entrepreneur may terminate the procurement contract, and

(d) Ground that procurement contract may be terminated in the event of *force majeure*.

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

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<sup>55</sup> Deleted by the First Amendment.

<sup>56</sup> Deleted by the First Amendment.

<sup>57</sup> Inserted by the First Amendment.

- (a) Payment of the amount, if any, due to be made for the value of the work, supply or service that has already been completed/performed satisfactorily,
- (b) Liability to be borne by a defaulting supplier, consultant, service provider or construction entrepreneur for the increased cost to be incurred by the public entity to carry out or cause to be carried out the work under the procurement contract,
- (c) Amount of the actual loss, damage sustained by the supplier, consultant, service provider or construction entrepreneur due to the termination of the procurement contract by the public entity without any default on the part of the former.

(4) Except as otherwise provided for in a procurement contract, the public entity may terminate the procurement contract by convenience for public interest.

(5) In the event of termination of a procurement contract pursuant to sub-section (4), the public entity shall pay the amount for the following work that has been completed prior to the termination of the contract:

- (a) Due payment referred to in clause (a) of sub-section (2),
- (b) In the event of a provision for making payment of any expenditure on a reimbursement basis, such expenditure actually incurred,
- (c) The price of the goods that have been specially manufactured for the public entity under the procurement contract,

(d) The expenditure incurred in the termination of the procurement contract, excluding the lost profit and the amount referred to in clause (c) of sub-section (3), and

(e) Such other expenditure as prescribed.

(6)<sup>58</sup> Notwithstanding anything contained elsewhere in this Section, a person who enters into a procurement contract may not terminate the contract without giving prior information to that effect to the public entity.

(7)<sup>59</sup> If a person who enters into a procurement contract with a public entity fails to commence the work under the contract or commences the work but leaves it in the meantime or fails to make the work progress in accordance with the contract, the public entity may terminate such a contract at any time.

(8)<sup>60</sup> In the event of termination of the contract pursuant to sub-section (7), the guarantee furnished for such work shall be forfeited in full. The amount required to complete the remaining work in accordance with the contract because of its termination shall be recovered as governmental dues from the bidder failing to so perform the work under the contract.

(9)<sup>61</sup> In the event of termination of the contract pursuant to sub-section (7), another contract may be made upon soliciting financial proposals, giving a time-limit of fifteen days, from among the bidders who have been selected pursuant to Section 25, for the purpose of completing the remaining work under such a contract.

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<sup>58</sup> Inserted by the First Amendment.

<sup>59</sup> Inserted by the First Amendment.

<sup>60</sup> Inserted by the First Amendment.

<sup>61</sup> Inserted by the First Amendment.

(10)<sup>62</sup> Approval of the one level higher authority shall be obtained prior to soliciting the financial proposal referred to in sub-section (9).

(11)<sup>63</sup> The financial proposal referred to in sub-section (9) shall apply only to the contract entered into through open bidding invited for a construction work.

(12)<sup>64</sup> In the event of failure to enter into the contract pursuant to sub-section (9), the procurement proceeding shall be commenced in fulfilment of the procurement procedures referred to in this Act.

60. Public notice of procurement contract: After a procurement contract has been entered into pursuant to this Chapter, the public entity shall publish as prescribed a notice including the result of the evaluation of bids or consultancy service.

## Chapter-8

### Provisions Relating to Conduct

61. Conduct of officials who are involved in public procurement proceeding: (1) Any official who is involved in the act of formulating a procurement plan, operating procurement proceeding, implementing a procurement contract or in other act as prescribed relating to procurement by the public entity shall observe the following conduct:
- (a) To discharge own duties impartially so that bidders can fairly compete in the procurement proceeding,
  - (b) To operate the procurement proceeding in public interest,

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<sup>62</sup> Inserted by the First Amendment.

<sup>63</sup> Inserted by the First Amendment.

<sup>64</sup> Inserted by the First Amendment.

- (c) To refrain from committing an act of conflict of interest in the procurement from his or her work, conduct or behavior,
- (d) To keep confidential all proprietary information of the bidder known to him or her in the course of the procurement proceeding,
- (e) To refrain from working in a person, firm, organization, company and other institution of private nature with whom he or she had had dealing of procurement at the time of holding post till a period two years after his or her retirement,
- (f) If he or she knows that any of his or her nearest relatives has participated as a bidder or proponent in the procurement proceeding in which he or she has involvement, to refrain from taking part in such procurement proceeding, and to immediately give information thereof to one level higher authority,

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

- (g) To refrain from committing any act in contravention of the prevailing law while carrying out procurement proceeding,
- (h) To refrain from committing, or being involved in the commission of, any corrupt or fraudulent practice,
- (i) To refrain from colluding or involving in a group prior to or after submitting bids or proposals with the intention of

depriving or causing to be deprived of the benefit of competition.

61A.<sup>65</sup> Departmental action to be taken: (1) If the superior office or competent body finds upon monitoring conducted by it that the concerned official has not fulfilled the responsibility set forth in this Act or has not observed the rules framed under this Act or observed the conduct, such an office or body may send a request to the competent authority to take departmental action against such an official in accordance with the prevailing law.

(2) If a request is received pursuant to sub-section (1), the competent authority shall take departmental action against such an official in accordance with the prevailing law relating to condition of his or her service and give information thereof to the body which has sent such a request.

62. Conduct of bidders or proponents: (1) A bidder or proponent shall perform such obligations as set forth in this Act, rules framed under this Act, procurement contract and other documents relating to procurement.

(2) Without prejudice to the generality of sub-section (1), no bidder or proponent shall do, or cause to be done, any of the following acts with the intention of making interference in the procurement process or implementation of the procurement contract:

- (a) To give or offer improper inducement, directly or indirectly,
- (b) To submit a fact by distorting or misrepresenting it,
- (c) To commit a corrupt or fraudulent act or be involved in such act,

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<sup>65</sup> Inserted by the First Amendment.

- (d) To intervene in the participation of another competing bidder or proponent getting involved in any way in the actions relating to bidding or proposal,
- (e) To commit an act of threatening directly or indirectly to cause harm to the life, body or property of any person to be involved in the procurement proceeding or a coercive act,
- (f) To make collusion or involve in groupism prior to or after the submission of bid or proposal with the objective of allocating procurement contract among the bidders or proponents or fixing the price of bid or proposal artificially or non-competitively or otherwise depriving the public entity of the benefit of the open and free competition,
- (g) To contact with the public entity during the period between the opening of bid or proposal and the notice of acceptance of bid or proposal being given with the objective of causing interference in bid or proposal or to do an act of interference in the examination or evaluation of bids or in the evaluation of proposals.

(3) A bidder who has been assigned the responsibility of preparing bidding documents or specifications of a procurement act or supervising the implementation of procurement or a person, firm, organization or company that is affiliated with such a bidder or an employee working in such a firm, organization or company cannot participate in the bidding proceeding of such procurement.

Provided that this provision shall not apply to a turn key procurement contract or a procurement contract so concluded as to carry out both the design and construction works.

63. Blacklisting and release from blacklisting: (1) The Public Procurement Monitoring Office may, in the following circumstance, blacklist a bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company from one year to three years according to the seriousness of his or her act:
- (a) If it is proved that he or she has committed an act contrary to the conduct referred to in Section 62,
  - (b)<sup>66</sup> If the bidder or proponent who has been selected for acceptance pursuant to Section 27 or 38 fails to appear to enter into the procurement contract,
  - (c) If it is proved subsequently that he or she has made a substantial error in the implementation of the procurement contract or has not substantially fulfilled the obligation under the procurement contract or the work carried out under the procurement contract is not of the quality referred to in that contract,
  - (d) If he or she is convicted by a court of a criminal offense disqualifying him or her to take part in the procurement contract,
  - (e) If it is proved that he or she has made the procurement contract by falsifying the qualification or making misrepresentation,
  - (f) Any such other circumstance as prescribed.
- (2) A bidder, proponent, consultant, service provider, supplier, construction entrepreneur or other person, firm, organization or company that is blacklisted pursuant to sub-section (1) shall not be

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<sup>66</sup> Amended by the First Amendment.

eligible to take part in the procurement proceeding by any public entity during that period.

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

(4) If any person, firm, organization or company that is ineligible to take part in the public procurement proceeding pursuant to sub-section (2) or (3) is found to have taken part in a procurement by a public entity, his or her bid or proposal shall not be entertained.

(5) Other provisions relating to blacklisting pursuant to sub-section (1) shall be as prescribed.

(6) The bidders, proponents, consultants, service providers, suppliers, construction entrepreneurs or other persons, firms, organizations or companies that have been blacklisted pursuant to sub-sections (1), (2), (3), (4) and (5) shall be released from the blacklisting in accordance with the criteria prepared by the Public Procurement Monitoring Office on the release from the blacklist.

## Chapter-9

### Provisions Relating to Monitoring of Procurement Activities

64. Public Procurement Monitoring Office: (1)<sup>67</sup> There shall be a Public Procurement Monitoring Office under the Office of the Prime Minister and Council of Ministers in order to monitor, regulate procurement activities by public entities and to manage the public procurement system.

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<sup>67</sup> Amended by the First Amendment.

(2) The chief of the office referred to in sub-section (1) shall be an employee of the gazetted special class of the civil service of the Government of Nepal.

(3)<sup>68</sup> .....

65. Functions, duties and powers of Public Procurement Monitoring Office:

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

- (a) To make recommendations to the Government of Nepal for making reforms in the policy or prevailing law relating to procurement,
- (b)<sup>69</sup> To issue such directives, procedures and technical guidelines as required in the field of procurement methods such as turn-key, EPC, framework or unit rate contract, management contract,
- (c) To prepare standard models of bidding documents, prequalification documents, contract documents and documents relating to request for proposal which are to be used by public entities to conduct procurement proceeding,
- (d) To collect statistics of procurement proceedings which have been or will be conducted by public entities and to monitor, or to make, or cause to be made, .....<sup>70</sup> auditing of whether or not such proceedings have been conducted in compliance with this Act or rules or directives made under this Act,

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<sup>68</sup> Deleted by the First Amendment.

<sup>69</sup> Amended by the First Amendment.

<sup>70</sup> Deleted by the First Amendment.

- (d1)<sup>71</sup> To make or cause to be made post procurement audits,
- (d2)<sup>72</sup> To prepare records of procurement related qualifications and experiences of construction entrepreneurs, suppliers, consultants and service providers,
- (d3)<sup>73</sup> To issue e-procurement guidelines,
- (e)<sup>74</sup> If a public entity seeks opinion, advice about any matter set forth in this Act or rules, directives made under this Act, to provide opinion or advice,
- (f) To establish and operate a procurement related website,
- (g) To publish bulletins in order to make public this Act and the rules, directives and technical guidelines made under this Act and public procurement related writings, articles, materials and similar other matters,
- (h) To prepare the procedures required for making coordination in procurement proceedings and submit the same to the Government of Nepal for approval,
- (i) To make arrangements for regular training programs for the bidders or employees who are involved or will be involved in procurement proceedings,
- (j) To make necessary criteria on releasing from the blacklist referred to in Section 63 and make release from the blacklist in accordance with such criteria,
- (k) To review, appraise construction works, supply, consultancy service and other service system in order to

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<sup>71</sup> Inserted by the First Amendment.

<sup>72</sup> Inserted by the First Amendment.

<sup>73</sup> Inserted by the First Amendment.

<sup>74</sup> Inserted by the First Amendment.

make the procurement system effective, and to regularly obtain suggestions from the service recipients, or international organizations and other foreign bodies as per necessity,

- (l) To prepare plans of domestic or foreign assistance required to systematize and reform the procurement system and to function as the central body coordinating such assistance,
- (ll) To authenticate, or cause to be authenticated, procurement experts,
- (m) To submit an annual report on procurement proceedings to the Government of Nepal, and
- (n) To do other prescribed functions.

(2) Notwithstanding anything contained in sub-section (1), the Public Procurement Monitoring Office shall neither involve in any manner in the procurement proceedings, except the procurement proceedings of its own, by other public entities nor resolve any dispute that has arisen in relation thereto.

(2a)<sup>75</sup> The Public Procurement Monitoring Office may, if it finds any procurement proceeding by a public entity to be contrary to this Act or the rules, procedures or directives made under this Act, send a request, thereby drawing attention, to the chief of the public entity to rectify the error made in such procurement proceeding and take action against the officials involved in the procurement proceeding and to the competent authority in cases where the chief of the public entity himself or herself has been involved in such procurement proceeding. If such a request is received, the chief of the concerned public entity or

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<sup>75</sup> Inserted by the First Amendment.

competent authority shall rectify the error made, take action against the concerned official in accordance with law and give information thereof to the Public Procurement Monitoring Office.

(3) The Public Procurement Monitoring Office shall perform the function of the secretariat of the review committee referred to in Section 48 and arrange for the budget required for the committee.

## Chapter-10

### Miscellaneous

66. Provisions relating to procurement to be made in special circumstance:

(1) Notwithstanding anything contained elsewhere in this Act, if the occurrence of a special circumstance results in the situation where the public entity will sustain further loss, damage if procurement is not made immediately, the public entity may make, or cause to be made, procurement immediately.

(2) The chief of the public entity shall give information of the circumstance referred to in sub-section (1) and detailed description about the procurement to be made immediately to the one level higher authority.

(3) Other provisions relating to the procurement to be made in a special circumstance shall be as prescribed.

67. Procurement process under this Act not to be followed: (1)

Notwithstanding anything contained elsewhere in this Act, the procurement process referred to in this Act is not required to be followed in any of the following circumstances:

(a) If the Government of Nepal decides that it is not appropriate from the point of view of national security or defense to make security, strategic or defense related

procurement by following the process referred to in this Act,

- (b) If, under an agreement made between the Government of Nepal and a donor party, procurement is to be made in accordance with the procurement guidelines of the donor party,
- (c)<sup>76</sup> If it is required for such public entities carrying on business transactions in competition with the private sector as prescribed to procure any goods or services for the operation of their business,
- (d)<sup>77</sup> If it is required to make procurement abroad, as prescribed, for any act such as fair, event, trade fair and exhibition to be organized abroad for social, cultural program or industrial, economic, technology exhibition and promotion,
- (e)<sup>78</sup> If it is required for any public entities such as Nepalese embassies and missions abroad to procure goods or services,
- (f)<sup>79</sup> If it is required for a public entity licensed to operate aircraft services to procure any equipment that is related to aviation or aircraft.

(2) In making a decision pursuant to clause (a) of sub-section (1), the Government of Nepal shall set out the reason for making the procurement and also determine separate procedures related thereto.

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<sup>76</sup> Inserted by the First Amendment.

<sup>77</sup> Inserted by the First Amendment.

<sup>78</sup> Inserted by the First Amendment.

<sup>79</sup> Inserted by the First Amendment.

(3)<sup>80</sup> The public entity shall prepare the procedures required for the procurement referred to in clauses (c), (d), (e), and (f) and approve and enforce such procedures, with the consent of the Public Procurement Monitoring Office.

(4)<sup>81</sup> The public entity shall include in the procedures made pursuant to sub-section (3) the matters including the business plan, life cycle and net present value for the procurement referred to in clause (f) of sub-section (1).

67A.<sup>82</sup> Not to hinder procurement proceeding: If it is required for the competent body to obtain any document for the purpose of examination under this Act or the prevailing law in relation to the procurement proceeding being taken by a public entity, such body shall so obtain such document as not to hinder, to the extent possible, the procurement proceeding from being proceeded.

68. Mode of communication: (1) Any such document, notice, decision or other information as required by this Act and rules made under this Act, bidding documents, documents relating to request for proposal or procurement contract to be given by the public entity to a bidder or consultant or by a bidder or consultant to the public entity shall, except as otherwise provided for in this Act, be given in writing.

(2) In cases where a notice sent pursuant to sub-section (1) cannot be served due to a failure to trace out the address of the recipient bidder or consultant or for any other reason, a public notice with a brief description of that matter shall be published in a daily newspaper of national circulation, and where the notice is so published, such a person shall be deemed to have duly received the notice.

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<sup>80</sup> Inserted by the First Amendment.

<sup>81</sup> Inserted by the First Amendment.

<sup>82</sup> Inserted by the First Amendment.

69.<sup>83</sup> Procurement transaction may be carried out through means of electronic communication: (1) A public entity may follow only the system of electronic procedure in any or all of the procurement acts.

(2) The procedures, system of, and inherent principles of, the procurement to be made through the electronic system pursuant to sub-section (1) shall be as determined by the Public Procurement Monitoring Office.

(3) Other procedures relating to electronic procurement shall be as prescribed.

70. Legal documents to be put on website: For the information and convenience of the general public, this Act and rules and procurement guidelines made under this Act shall be put on the website of the Public Procurement Monitoring Office.

71. Evaluation committee to be formed: (1) The public entity shall form an evaluation committee as prescribed for the examination and evaluation of pre-qualification proposals, bids, expression of interest or proposals of consultancy services or sealed quotations.

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

72. Records of procurement proceeding: The public entity shall keep safely the records of the documents on the procurement proceeding for such a period as prescribed.

73. Delegation of power: The competent authority may delegate any of the powers conferred on that authority by this Act or the rules made under this Act, other than those powers as prescribed, to any employee.

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<sup>83</sup> Amended by the First Amendment.

74. Power to frame rules: (1) The Government of Nepal may frame necessary rules for the implementation of the objectives of this Act.

(2) Notwithstanding anything contained in sub-section (1), any public entity, other than the public entity referred to in sub-clause (1) of clause (b) of Section 2, may frame necessary rules subject to the Act, rules or Formation Order relating to such entity.

74A.<sup>84</sup> Power to make technical guidelines, procedures and directives: The Public Procurement Monitoring Office may make necessary technical guidelines, procedures and directives for the implementation of this Act, and such procedures or directives shall come into force after being approved by the Government of Nepal.

74B.<sup>85</sup> Power to remove difficulties: If there arise any difficulty with the implementation of this Act, the Government of Nepal may, by a notification in the Nepal Gazette, issue necessary order to remove the difficulty.

75. Repeal and amendment: (1) The proviso to Section 168 of the Motor Vehicle and Transportation Management Act, 2049 (1992) is hereby repealed.

(2)<sup>86</sup> Notwithstanding anything contained in the prevailing law, if the legal provisions relating to procurement of the public entities referred to in sub-clause (2) of clause (b) of Section 2 appears to be inconsistent with this Act, the Public Procurement Monitoring Office shall send an intimation to the concerned public entity to so amend such provisions as to be consistent with this Act.

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<sup>84</sup> Inserted by the First Amendment.

<sup>85</sup> Inserted by the First Amendment.

<sup>86</sup> Amended by the First Amendment.

(2a)<sup>87</sup> If an intimation is received pursuant to sub-section (2), the concerned public entity shall amend its procurement law so that such provisions are consistent with this Act not later than one month and give information thereof to the Public Procurement Monitoring Office.

(2b)<sup>88</sup> If information referred to in sub-section (2a) is not given, such procurement law shall be deemed to be *ipso facto* invalid.

(3) The following Section 7 has been substituted for Section 7 of the Financial Procedure Act, 2055 (1998):-

"7. Procedures for making expenditure: The provisions on financial administration relating to the operation of government transactions and project implementation, deposits, charges, service fees, taking advance and settlement thereof, protection of government cash and in-kind property, auction, remission, and other miscellaneous provisions and procedures related thereto shall be as prescribed."

76. Saving: All acts and actions relating to procurement performed under the Financial Procedure Act, 1988 (2055) and the Financial Administration Regulation, 1999 (2056) framed thereunder and the provisions of the Act, Rules or Formation Order related to procurement of the public entities referred to in sub-clauses (2), (3), (4), (5) and (6) of clause (b) of Section 2 shall be deemed to have been performed under this Act.

Note: Words converted by the Administration of Justice Act, 2016 (2073):

(a) "High Court" for the words "Appellate Court",

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<sup>87</sup> Amended by the First Amendment.

<sup>88</sup> Amended by the First Amendment.

- (b) “Judge of the High Court” for the words “Judge of the Appellate Court”.