

ISLAMIC REPUBLIC OF AFGHANISTAN

PROCUREMENT LAW, 2008

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CHAPTER I: GENERAL PROVISIONS

Article 1: Objective

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

Article 2: The Purpose

The purposes of this Law are:

- ensuring transparency in procurement proceedings;
-

- (24) “*Consultants’ services*” refers to activities of a professional, intellectual, and advisory nature. Provision of materials and goods or works shall be an exception to this rule,

CHAPTER II: PROCUREMENT PLANNING

Article 11: Procurement Plan Development

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

Article 12: Initiation of Procurement Proceeding

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

Article 13: Allocation of Funds

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

Article 14: Description of the Procurement

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

- (2) To avoid creating obstacles to participation by bidders in the procurement proceedings bidding and pre-qualification documents shall provide descriptive information that does not unnecessarily favor a [particular] bidder by:
 - (i) describing the goods, works and services according to its ~~effectiveness of usage~~ [desired performance];
 - (ii) Describing national and international standards.
- (3) No requirement or reference shall be made in the technical specifications to a particular

CHAPTER III: ELIGIBILITY AND QUALIFICATION OF BIDDERS

Article 17: Eligibility and Qualification

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

Article 18: Prequalification of Bidders

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

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

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

Article 19: Database of Bidders

- (1) The Ministry of Finance (MOF) and other entities shall develop data base to facilitate the identification of eligible bidders. The data base shall be designed to be easily used by the widest possible audience, preferably posted on a website (on the Internet), and shall be kept updated.
- (2) Database of eligible bidd 15.9

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

21. Request for Quotations

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

Article 22: Open Tendering

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

Article 23: Restricted Tendering

Article 24: Single-Source Procurement

- (1) Single-source procurement is permitted only in the following circumstances:
 - (i) the decision of the Procurement Committee supported by its written

Article 27: Publication of Announcement

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

Article 28: Announcement for Restricted Tendering

- (1)

- performance of the procurement contract to be provided by the bidder entering into the procurement contract;
- (v) procurement proceedings method;
 - (vi) The currency or currencies in which the bid price is to be formulated and expressed; and payment terms
 - (vii) The manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements such as any applicable transportation and insurance charges, customs duties and taxes;
 - (viii) The quantity, nature and required technical and quality characteristics of the

Article 33: Opening and Evaluation of Bids

- (1) Bids shall be opened at the nearest time upon submission deadline in a public proceeding in accordance with the bidding documents in the presence of bidders or their legal representatives. The names and addresses of bidders attending the bid opening, and the respective bid prices, shall be recorded in the minutes, which shall be signed by all participating bidders
- (2) Bids remain valid until the time indicated in the bidding documents. The time of validity of a bid may be extended with the agreement of the bidder. In this case, the

- (3) If the successful bidder fails to conclude a contract in accordance with the terms set forth in the bidding documents, or the request for proposals, entity shall offer the

(ii)

(6)

CHAPTER VI: CONTRACT ADMINISTRATION

Article 46: Standard Forms

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

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

Article 47: Pricing

- (1) The procurement contract shall state a price expressed either as a unit price applied to quantities delivered, or a lump-sum applied to the performance of all or part of the contract, unless a different form of pricing is authorized in accordance with the provisions of this Law.
- (2) A procurement contract may provide for a provisional price, if it specifies the manner in which the price will be determined, and th

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

Article 65: Registration of Contracts

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

Article 66: Record and Reports of Procurement Proceedings

(1)

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

Article 68: Obligation of Procurement Officials

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

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

Article 70: Debarment of Bidders

- (1) A bidder shall not be excluded from participation in a procurement process except for:
 - (i) providing false information in its bid, or in a procurement proceeding;
 - (ii) collusion between the bidders or a bidder and procurement officials concerning the bidding documents;
 - (iii) improper interference in the participation of competing bidders;
 - (iv) misconduct relating to the submission of bids, including, corruption, collusion, price fixing, a pattern of under-pricing of bids, and breach of confidentiality, and any other misconduct referred to in provisions of Article 69 of this Law;
 - (v) previous record of violation in the procurement contract;
 - (vi) conviction to a punishment for a violation of a procurement contract or subcontract; or
 - (vii)

Article 73: Co-operation with Oversight Authorities

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

CHAPTER VIII: FUNCTIONS OF PROCURMENT ENTITIES

Article 74: Function of the Procurement Office

- (1) The functions of Procurement office shall include:
 - (i) providing and regulating procurement plan;
 - (ii) preparation of tendering announcement, requests, bidding and other documents related to procurement proceedings; publication and distribution of such documents when required;
 - (iii) receipt of bids, and preparation of contract award recommendations for the procurement committee and award authority;
 - (iv) preparation of procurement contract documents in accordance with the provisions of this Law;
 - (v) performance of secretariat services for the respective Procurement Committee;
 - (vi)

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

Article 76: Members of the Procurement Committee

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

Article 77: Special Procurement Commission

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

Article 78: Contract Management

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

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

Article 79: Management of Procurement of Common-Use Items

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

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Article 80: Procurement Policy Unit

(1) A “Procurement Policy Unit” (PPU) shall be established within the Ministry of Finance

Article 82: Setting and Updating Thresholds Limits for Award Authority

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

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appropriate to inspect and accept the performance under the contract.

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

Article 86: Receipt of Goods

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

Article 87: Warehousing

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

Article 88: Disposal of Surplus Property

- (1) The entity in agreement with Ministry of Finance may sell or lease movable and immovable properties in excess of an entity's needs and after making sure they are not needed by other entities, in accordance with the provisions of this Law and other relevant rules.
- (2) Immovable property is sold or leased at mte property is sold ortyolddniy y u is sdb(nniy)-15be(db((t)-20

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

Article 89: Report of Surplus Property

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

CHAPTER IX: RESPONSIBILITY OF AWARD AUTHORITY AND SPECIAL PROCUREMENT COMMISSION

Article 90: Approval of Contracts

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

Article 91: Threshold Limits for Award Authority

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

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

<i>(v)National Single Source Procurement</i>	5,000,000	25,000,000	5,000,000
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ANNEX: DOCUMENTATION FOR PROCURMENT

- (1) The documentation required to be generated in the course of a request for quotations proceeding and other procurement procedures shall include the following:
 - (a) "Purchase Requisition": the document prepared, in accordance with Article 12, in order to initiate a procurement process and which shall include at least a brief description of the goods, works or services required, when they are required, an estimate of the cost and an approval to proceed from the appropriate authority and a unique procurement reference number.
 - (b) "Request for Quotations document": the document issued to bidders to invite

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