

The Public Procurement Bill, 2011: Salient Features

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Overview

- Objectives
- Basic Features
- Scope and Coverage
- Transparency and Accountability
- Procurement Process
- Diversity of Procurement Methods
- Grievance Redressal
- Offences and Penalties

Objectives

- A legislation to regulate public procurement by all Ministries and Departments of the Central Government, Central Public Sector Enterprises, Autonomous and Statutory bodies controlled by the Central Government and other procuring entities;
- Ensuring transparency, fair and equitable treatment of bidders, promoting competition and enhancing efficiency and economy in the procurement process;
- Ensuring highest standards of transparency, accountability and probity in the public procurement process and enhancing public confidence in public procurement.

Basic Features

- Contains broad principles and provides flexibility for the variety of procuring entities to be covered.
- To be supplemented by Rules for procurement of Goods, Works and Services. Separate sets of Rules for:
 - Procurements for the purpose of national security
 - Entering into Public Private Partnerships
 - Procurement by Central Public Sector Enterprises
- Exemptions from the law in certain circumstances
- Key transparency and accountability norms incorporated from international best practices
- Expeditious and streamlined grievance redressal procedure

Scope and Coverage

- To apply to procurements made by:
 - Ministries and Departments of the Central Government, their attached and subordinate offices
 - Central Public Sector Enterprises controlled by the Central Government
 - Central Purchase Organisations of the Central Government
 - Constitutional bodies whose expenditure is met from the Consolidated Fund of India
 - Any body or Board or corporation or authority or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament Statutory or controlled by the Central Government
 - Provision for covering other entities by notification
- No entities excluded from the law; only certain circumstances deemed relevant for exclusion
- Covers the procurement process from the stage of needs assessment up to the award of the procurement contract.

Transparency and Accountability

- An accountable 'needs assessment' process with all decisions and documents to be duly maintained facilitating an audit trail
- No restriction on participation of bidders other than on specified conditions
- Documentary record of procurement proceedings mandated
- Transparent methods of registration and pre-qualification of suppliers respecting the need for fair competition
- Statutory backing for Integrity Pacts between the procuring entity and participating bidders
- Description of subject matter of procurement to be objective, functional and generic with guidelines to be prescribed
- Standard terms and conditions of contract to be prescribed

Transparency and Accountability

- Criteria for evaluating bids to be mandatorily published in the complete bidding document along with relative weights attached; no changes permitted once published
- No price negotiations except in circumstances to be prescribed for which reasons to be recorded.
- Establishment of an online portal known as the Central Public Procurement Portal as a single information window for all matters relating to procurement. Statutory requirement to publish information regarding invitations to bid, names of competing bidders, excluded bidders, debarred bidders, and award details.
- E-procurement and e-payment enabled

Procurement Process

- Essential contents of bidding documents mandated
- Sufficient time to be allowed to prepare and present bids. Same time for all bidders.
- Time bound reply to bidders' request for clarifications. All clarifications to be published on portal. Pre-bid conference enabled
- Modifications to bid documents to be published in the same manner as original bidding document.
- Accountable bid opening and bid evaluation mechanism with separate 3-member Bid Opening Committee and Bid Evaluation Committee, with provision for a Technical Evaluation Committee, in case technical bids have to be evaluated separately
- Standstill period of 10 days after notification of successful bidder and before signing contract.

Diversity of Procurement Methods

- Open Competitive Bidding as the preferred method of procurement
- A wide range of alternative methods available depending on the needs of the procuring entity and subject to appropriate justifications being provided for their use
- Competitive Negotiations, Electronic Reverse Auctions and Framework Agreements facilitated by the Bill in accordance with international best practices
- For low-value procurements and standard commercial items, three existing methods of procurement as per GFRs — purchase through Rate Contracts, purchase without quotations and purchase by Purchase Committees— continued.

Grievance Redressal

- A statutory de-centralised three-tier framework for redressal of grievances arising under this Bill established:
 - Reconsideration by procuring entity
 - Grievance Redressal Committee in the procuring entity, which shall act quasi-judicially
 - Judicial proceedings before the appropriate High Court
- For disputes relating to award of contract in high-value procurements, in view of their relatively small number and high importance, second tier redressal directly in High Court
- For all other disputes, in view of the large number of procuring entities and the need for de-centralised and expeditious dispute resolution, three tier framework to be followed

Offences and Penalties

- Prevention of Corruption Act applicable to offences by Public Servants
- Corruption, collusion and anti-competitive behaviour by bidders to attract appropriate penalties. Term of imprisonment equal to that prescribed in Prevention of Corruption Act.
- Provisions for debarment of bidders:
 - Automatic debarment on conviction for certain offences
 - Discretionary debarment on conviction for less serious offences
 - Discretionary debarment in addition to forfeiture of bid/performance securities. (Does not require conviction)
- All debarments to be notified on the Central Public Procurement Portal
- Appropriate penalties for frivolous or vexatious applications for grievance redressal