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د ملي تداركاتو اداره  
National Procurement Authority

Islamic Republic of Afghanistan  
Administrative Office of the President  
National Procurement Authority



Translated version of

# Procurement Law

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**Disclaimer:** The English version of the law is translation only. Dari and Pashto version published in official gazette no (1223) dated September 17, 2016 will supersede if contradiction is observed between English version and the later.

## **Introduction to Procurement Law**

Public Procurement Reform is an integral part of governance reform and anti-corruption drive for National Unity Government in order to create a transparent and efficient procurement system enabled to obtain higher value for money in government purchasing. As starting point in procurement reform work, revision and revamping of procurement legal framework was an immediate task to be undertaken in order to formalize reform initiatives and minimize corruption prone areas in procurement spectrum.

Pursuant to the provision of sub-clause (4) of Article (75) of Constitution of Islamic Republic of Afghanistan, Procurement Law was revised, and new amendments were passed by both lower house (Wolsi Jirga) and Upper house (Murshano Jirga) of National Council (Parliament) of Islamic Republic of Afghanistan, and subsequently ratified by H.E President of Islamic Republic of Afghanistan through decree no. (90) Dated August 11, 2016. The enacted Law aims to achieve the following objectives:

- Organize procurement of goods, works, and services required by Procuring entities
- Ensure transparency in procurement proceedings;
- [to have] Effective control of financial affairs and public expenditure;
- Ensuring economy [best value for money] in the procurement of goods, works and services;
- Provide equal tendering opportunities for participation to all eligible bidders in procurement proceedings.

The Procurement law includes eight chapters and 68 articles, and shall be applied in all procurement proceedings by all budgetary units and in procurement of entities financed by public funds.

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## **Procurement Law**

### **CHAPTER ONE GENERAL PROVISIONS**

#### **Basis**

##### **Article 1**

This law is enacted pursuant to the provisions of paragraph (4) of article 75 of the Constitution of the Islamic Republic of Afghanistan.

#### **Objectives**

##### **Article 2**

The objectives of this Law are:

1. Regulating the procurement of goods, services and construction works required for entities;
2. Ensuring transparency in procurement proceedings;
3. Effective control of public funds;
4. Ensuring principle of value for money and quality in procurement of goods, services and construction works;
5. Providing tendering opportunity for participation of all eligible bidders in procurement proceedings.

#### **Terminology**

##### **Article 3**

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

1. *“Procurement”* the acquisition of goods, services, and works and their incidental services by entities, pursuant to the provisions of this law, using public funds.
2. *“Award authority”* the first-rank heads of entities *or* the person with authority to approve, sign, amend, or cancel procurement contract in accordance with the provisions of this law.
3. *“Bidder”* a natural or legal entity who, either he or his legal representative participates in procurement proceedings for submitting an offer as per the provisions of this law and conditions set forth in the bidding documents.
4. *“Bidding Documents”* the documents describing the eligibility conditions of bidders, the conditions and standards of evaluation, quantity, quality, and specifications of the goods, non-consultative services, work to be procured, and the method of submitting a bid put to the disposal of bidders by entities.
5. *“Bid”* the proposal or quotation presented by a bidder in response to bidding documents, request for proposal, or request for quotation and will include quantity

and quality, specifications, unit price, total price and other required conditions of procurement.

6. *"Tendering"* any formal and competitive procurement procedure through which bids are requested, received and evaluated and as a consequence of which a contract award is made to the successful bidder identified.
7. *"Request for Quotations"* the method used by entities to request the price of procurement from vendors, in accordance with the provisions of this law.
8. *"Open Tendering"* is the method, in which any bidder may submit a bid concerning the procurement of his/her interest, in compliance with the specifications set forth in the bidding documents, to the relevant entity.
9. *"Restricted Tendering"* the procurement method in which a limited number of bidders are invited to bid for specific procurement, in accordance with provisions of this Law.
10. *"Single-Source Procurement"* the method of procurement in which the procurement contract is concluded directly without tendering in accordance with provisions of this law.
11. *"Contract"* the written agreement made between an entity and successful bidder, according to the provisions of this law, and will include the specifications and requirements set forth in the bidding documents, as well as obligations of both parties and is effective within the duration of contract.
12. *"Procurement proceedings"* are the activities that follow the procurement initiation decision by award authority and terminate with the completion of the contract in accordance with the specifications of the bidding documents and contract provisions.
13. *"Request for Proposal"* the document in which the procedures and conditions for submission of proposals are described and it is utilized for acquisition of consultants' services.
14. *"Contractor"* a successful bidder who signs the procurement contract with the respective Entity.
15. *"Responsive Bid"* a bid that after evaluation meets the technical and qualitative standards and the requirements set forth in the bidding documents.
16. *"Securities"* the funds in cash, bank guarantee or equivalent credible financial asset that the bidder or contractor deposits in accordance with the provisions of this law.

17. *“Goods”* objects of every kind including equipment, products, raw materials wether in solid, liquid or gas form, as well as the services incidental to, provided the value of such incidental services does not exceed that of the goods.
18. *“Bid Opening Committee”* a group of experienced personnel of an entity appointed by award authority to open the bids, in accordance with the provisions of this law, that cannot be less than three persons. The members of the Bid Opening committee cannot be included in the evaluation committee of same procurement.
19. *“Evaluation Committee”* a committee of expert employees appointed by award authority to evaluate and compare bids, determine the responsive bids and successful bid and prepare the evaluation report, and will encompass not less than three persons.
20. *“Inspection Committee”* a committee of expert employees appointed by a entity for the purpose of assuring quality and quantity of the procurement as per the provisions of contract, and will include not less than three members.
21. *“Entity”* ministries, General Directorates, independent state commissions, municipalities, state-owned enterprises, and their secondary budgetary units, other budgetary units or state-owned companies and private-state owned companies.
22. *“Consultants’ services”* the activities of a professional, intellectual, and advisory nature and includes designing, monitoring, training, auditing, software development, expert proposals and advice, and similar technical or professional services. Supply of goods and works shall be an exception to this rule, unless they have an informational nature.
23. *“Works”* includes the work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure, site preparation, excavation, installation of equipment, decoration activities, as well as services incidental to them such as drilling, mapping, photography, and similar services provided pursuant to the provisions of contract, provided that the value of incidental services does not exceed that of the construction itself. The repairing of ancient buildings is an exception to this rule.
24. *“Conflict of Interest”* the situation in which procurement staff including award authority benefits from procurement in any way possible or are the a relatives of any of the bidders. Relatives, in this context, means children, father, grandfather, mother, grandmother, spouse, brother, sister, aunt, uncle and their children to second level, spouse’s parents and brother- and sister-in-laws.
25. *“Retention Money”* the amount of cash withhold as financial guarantee from payments for contractor in procurements with warrantee period and is refunded after the end of warrantee period or in case of lack of any defects in goods, services and works.

26. *“Procurement Office”* an Office in-charge of managing all procurement of the respective entity in accordance with the provisions of this law.

27. *“Non-consultancy Services”* activities which doesn’t have advisory, purchasing of goods and works’ nature and includes, rent, leasing houses, offices, vehicles, warehouses, maintenance, wages, etc.

### **Scope of Application**

#### **Article 4**

Entities and other none-budgetary units performing procurement using public funds are required to execute the procurement proceedings in accordance with the provisions of this Law, except in cases as mentioned below:

- 1- Where procurement requires confidentiality to ensure the interests and good of the nation, the type and nature of such procurements shall be described in Procurement regulation;
- 2- Where the procurement guidelines of international institutions conflicts with this Law, the government, considering previous commitments in financing agreements of respective project, may agree to the execution of procurement in accordance to guidelines of concerning institutions;
- 3- Unless agreed otherwise, procurements for Afghan Government missions abroad shall be conducted in accordance with the rules and regulation of the host country, observing the provisions of Article 63 of this Law.
- 4- Electronic Procurement and its related affairs shall be regulated by a separate regulation.
- 5- Procurement of joint state-private owned corporations in which the government share less than (25%).

### **Utilization of Standard Procurement Forms**

#### **Article 5**

Procuring entities shall utilize the standard bidding documents, contracts and other standard forms issued by the National Procurement Authority in their procurements in accordance to Procurement Procedure.

## **Procurement Language**

### **Article 6**

- (1) The entity must prepare the procurement standard documents; such as bidders' pre-qualification documents, bidding documents, request for proposal and contracts, in one of the official languages of Afghanistan.
- (2) In international tendering, the entities shall also prepare the documents mentioned in sub-article (1) of this article in English or other common languages used in international business.
- (3) Unless stipulated otherwise in the bidding documents. The offer or its attached documents submitted in foreign languages shall be accompanied by translation into an official language of Afghanistan, translated by a certified or authorized translator at the expense of the bidder.

## **Preference of Procurement from National Sources**

### **Article 7**

- (1) Entities shall be obliged to do the procurement domestically in accordance with bidding documents, provided that the price of the domestic procurement is not higher than the imported procurement by a percentage set in Procurement Procedures.
- (2) The price of the bids of bidders who do not have a resident representative in Afghanistan and thus are not subject to income tax payments, in comparison with the bids of bidders with a resident representative in the country and are subject to the payment of income tax, shall be increased by the percentage set in Procurement Procedures for the purpose of evaluation.
- (3) The details of preference of procurement from domestic sources and its method of application shall be set forth in Procurement Procedure.

## **Participation of Small Domestic Enterprises in Procurement**

### **Article 8**

Entities are obliged to facilitate participation of small domestic enterprises and individuals in procurement, in accordance with the Procurement Procedure.

## **Environmental Protection**

### **Article 9**

The entity and contractor are obliged to take necessary actions to protect environment in procurement proceedings and the implementation of contracts in accordance with relevant legal document.

## **Information Technology**

### **Article 10**

- (1) The National Procurement Authority shall seek ways to utilize information technology in public procurement including creation of an information center (database) to register bidders and facilitate the identification of qualified bidders set forth in article 16 of this law, in accordance with Procurement Procedure.
- (2) The relevant entities have the obligation to assist the National Procurement Authority in the implementation of the provisions of paragraph (1) of this article.

## **CHAPTER TWO PROCUREMENT PLANNING**

### **Preparation of Procurement Plan**

#### **Article 11**

- (1) Entities shall develop their procurement plans considering available funds, economy of scale, appropriate time and other relevant issues.
- (2) Entities shall observe the provisions of this law and other relevant laws in developing and submitting the Procurement Plan.

### **Initiation of Procurement Proceedings**

#### **Article 12**

- (1) Entities are obliged to specify and calculate the total value of all procurements that shall be necessary during the fiscal year.
- (2) The entity can initiate procurement proceeding after verification of needs and approval of procurement plan and proceed to contract award stage, based on final draft budget.
- (3) The entity cannot award procurement contract prior to the approval of budget.

### **Inserting Budget Code**

#### **Article 13**

- 1) Entities are obliged to insert the budget code of the procurement stated in paragraphs (2 and 3) of article 12 of this law in the bidding documents, request for proposal and contract.



- 2) In Procurements that the duration of its completion exceeds that of budget document, the procurement proceedings shall start after obtaining prior written agreement of the Ministry of Finance. In such occasions, the annual expenditures and the percentage of planned procurements shall be reported by entity to the Ministry of Finance in documented form.

### **Description of Procurement**

#### **Article 14**

- 1) Entities are obliged to describe the following specifications in their bidding documents, procurement plans, samples and designs:
  - 1- quality and quantity of procurement;
  - 2- type of services
  - 3- Technical Specifications of procurement;
  - 4- symbols, packaging and labeling;
  - 5- terms and conditions of Procurement Contract;
  - 6- Certification, testing of goods, services and construction affairs and its methods
- 2) To facilitate the participation of bidders in procurement process, entities have the obligation to provide descriptive information about procurement from the point of view of its effectiveness of utilization, and explanation regarding national and global standards in the bidding documents and pre-qualification of bidders, and refrain from setting conditions that would hinder the participation of other bidders in the process.
- 3) In the technical descriptions, the entity is obliged to describe only the actual needs, which the procurement is intended for, and avoid descriptions entailing features in excess of actual needs.
- 4) Entities shall not give details regarding trademarks, patents, manufacturing designs, geographical address of the production site of certain producers or suppliers, unless:
  - 1- there is no other practical way of describing the procurement requirements,
  - 2- Words such as “like or its equivalent” are included in the specifications referenced in sub-article (1) of this article.
- 5) The procurement and exceptional cases of sub-article (4) of this article shall be foreseen by National Procurement Authority in Procurement Procedure.

## **Division of Procurement into Lots**

### **Article 15**

- (1) Splitting up procurement into lots is permitted only if it is financially and technically more advantageous to the procuring entity or facilitates participation of small domestic enterprises.
- (2) It is not permitted to divide procurement to avoid the application of competitive procurement methods or the implementation of the provisions of sub-article (3) of article 63 of this law.
- (3) In case of dividing a procurement contract as stated in paragraph (1) of this article, the following information shall be provided to bidders:
  - 1- Number of lots, and the nature, quantity and quality of each lot;
  - 2- Description about the way the bids for one or more lots may be submitted, together with specifying that separate bids can be submitted for each lot;
  - 3- Information about the basis for contract award, as per the lowest combination of evaluated bids.
- (4) The entity may award all lots to the same bidder in accordance with the conditions set forth in the bidding documents, provided that the approach achieves the lowest evaluated bid for the combined lots.
- (5) If one or more lots have not been awarded, the entity can arrange those lots, by bringing necessary changes, for a new tendering process.
- (6) To ensure compliance with the provision of sub-article (2) of this article, the entity is obliged to submit the procurement documents of the lots to the National Procurement Authority for review, if their total value exceeds the award authority's threshold limits.

**CHAPTER THREE**  
**Bidding Proceedings**

**Eligibility and Qualification of Bidders**

**Article 16**

(1) In order to be eligible to participate in procurement, a bidder shall:

- 1- have the legal capacity to enter into the contract;
- 2- Not be insolvent, in receivership, bankrupt or being wound up, its business activities must have not been suspended, and it must not be subject to legal proceedings for any of the foregoing;
- 3- Must not have confliction of interest;
- 4- Within a period of two (2) years prior to the participation in the procurement proceedings, must not be convicted to business or professional misconduct by the court of law;
- 5- Must not be subject to debarment according to the provisions of Article 49 of this Law;
- 6- Must possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement, business reputation, and competent staff to perform the procurement.
- 7- Have other qualifications set forth in the Procurement Procedures.

(2) In case of paragraph (6) of sub-article (1) of this article, the bidder shall prove with valid evidence and documents, included in the offer, that he meets conditions of the respective bidding documents in accordance with Procurement Procedure.

(3) The provisions of sections (3, 4 and 5) of paragraph (1) of this article shall also apply to the bidder's managers and employees.

(4) The entity is obliged to evaluate qualification of bidders as per conditions set forth in pre-qualification documents, bidding documents and provision of this article.

(5) A bidder shall be disqualified if he/she submits false, inaccurate or incomplete information concerning his/her eligibility, qualification and items set forth in sub-article (1) of this article and fails to correct such deficits promptly upon request by the entity.

**Bidders' Prequalification Evaluation**

**Article 17**

(1) A prequalification proceeding may be held for procurements of complex nature and for group of contracts in order to identify the bidders that are qualified to submit bids.

Qualifications of bidders in prequalification proceedings will be assessed in accordance with section (6) of Paragraph (1) of article 16 this law.

- (2) Pre-Qualification evaluation documents shall be provided for all bidders responding positively to the invitation to prequalify and shall contain all information required to complete applications for prequalification.
- (3) Responses to requests for clarification of the prequalification documents shall be communicated to all bidders according to Procurement Procedure. If the bidders need sufficient time to respond, the procuring entity shall be obliged to extend the deadline for submission of applications.
- (4) The entity shall take decision with respect to each application to pre-qualify. All bidders that have been pre-qualified shall be invited to submit bids in the procurement proceedings.
- (5) Other cases that require pre-qualification of bidders will be foreseen in the Procurement Procedure.

## **Procurement Methods**

### **Article 18**

- (1) Procurement is carried out through one of the following national or international methods:
  - 1- Request for quotations;
  - 2- Open tendering;
  - 3- Restricted tendering;
  - 4- Single-source procurement;
- (2) The approach and conditions of use of the methods set forth in sub-article (1) shall be regulated in Procurement regulation.
- (3) Selection of appropriate procurement method shall be foreseen in the procurement plan of the entity, in accordance with the provisions of this Law.
- (4) In addition to the methods set forth in sub-article (1) of this article, the National Procurement authority can foresee new procurement methods, as per the need, and include them in the Procurement regulation.
- (5) Open Tendering is the default procurement method. If procurement through open tendering is not feasible, a written justification shall be placed in the record of the procurement proceedings stating the reasons for using other procurement method, from the above list.

## **Procurement Announcement**

### **Article 19**

1. The announcement of procurement shall include the following information:
  - 1- Procurement description;
  - 2- The means for obtaining bidding documents;

- 3- The deadline for the submission of bids, and the time and venue for holding bid opening sessions;
  - 4- The procuring entity's address;
  - 5- Requirements for provision of security.
  - 6- Any other information which clarifies procurement in accordance with the provisions of this Law.
2. The entity is obliged to publish an invitation to pre-qualify, or a notice of tendering in the mass media with wide circulation at its own expenses.
  3. In the case of international tendering, the announcement will be published in English language through one of the wider circulation international media.
  4. The entity is obliged to publish its procurement announcements in the National Procurement Authority website, its own website and other websites introduced by the National Procurement Authority.

## **Bidding Documents and Request for Proposal**

### **Article 20**

- (1) Bidding documents and request for proposal, which shall be prepared by the entity, will be the basis of tendering and shall contain the following information:
  - a. Description of the respective procurement, information contained in the procurement announcement, conditions to prepare and period for submitting bids, date and place for opening the bids.
  - b. Criteria for evaluating bidders' eligibility and qualification;
  - b. Bids evaluation criteria;
  - c. Procurement method;
  - d. Amount and type of bid security provided by bidder;
  - e. The amount of performance security by the successful bidder;
  - f. The manner and currency in which the bid price is to be formulated, including elements such as expenses incidental to procurement, any applicable transportation and insurance charges, custom duties and income tax;
  - g. Details about the nature and required technical and quality characteristics of the goods, construction work or services to be procured, procurement consistency, any incidental services to be performed; the location where construction works is to be effected or the services are to be provided; and the desired or required time for goods to be delivered, construction works or services to be performed;
  - h. Description and amount of the penalty for delay, if any;
  - i. Bid documents distributed to bidders shall have the same subject and content and should not contradict each other;
  - j. Any other information in accordance with the provisions of this Law.

- (2) The bidding documents shall be made available for all bidders who request it. Request for proposal shall be made available for eligible bidders only.
- (3) Standard Bidding documents for procurement of medicine and medical equipment will be prepared by the National Procurement Authority in consultation with the Ministry of Public Health.
- (4) Bidders can request more information about bidding documents and request for proposal, if the request is filed with the entity at least 10 days prior to bid submission deadline.
- (5) The entity is obliged to provide clarifications to the bidder and for other bidders if necessary in accordance with the rules of Procurement Procedures.
- (6) If deemed necessary, the entity may extend bid submission period before the expiration of bid submission deadline.

## **Submission of Bids**

### **Article 21**

- (1) The manner to obtain bidding documents, to submit bids and its period shall be regulated by the Procurement Procedures.
- (2) The bid shall be signed by the bidder or his/her authorized legal representative, and shall be sealed as per the rules of the Procurement Procedures prior to submission.
- (3) Bids submitted after the deadline set for submission in the bidding documents shall be rejected and returned unopened.

## **Opening and Evaluation of Bids**

### **Article 22**

- (1) Bids shall be opened after the submission deadline in a public proceeding in accordance with the conditions set forth in bidding documents and Procurement Procedure 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 of the proceeding, which shall be signed by all participating bidders.
- (2) Bids remain valid until the time indicated in the bidding documents. The validity period of the bid may be extended on agreement of the bidder. In this case, the validity of bid security shall also be extended.
- (3) As mentioned in paragraph (1) of this Article, the evaluation committee shall evaluate and compare the bids in compliance with the contents of the bidding documents within the period foreseen in Procurement Procedure and seek clarifications of bids in writing from bidders but cannot accept requests for changes in, or negotiate any terms of the bids with the bidders, else it shall be legally pursued.

- (4) The evaluation committee shall correct arithmetical errors appearing on the bid. A bid in which the requirements of bid documents have not been observed, or its work specifications are different with that of other bids shall not be valid.
- (5) The successful bid shall be the responsive bid which offers the **lowest price** after evaluation, and meets the criteria specified in the bidding documents including qualitative and technical standards of procurement. Only offering the lowest price by an offer that has not been specified responsive will not be the ground for success.
- (6) In Procurement of Consultant's Services the successful bid shall be evaluated and identified in accordance with Procurement Procedures.
- (7) Following the specifying of responsive bid, selection of the successful bidder, and approval of award authority, the entity must take necessary actions, observing sub-article (4) of article 23 of this law.

### **Acceptance of Bids**

#### **Article 23**

- (1) The Bids Evaluation Committee shall evaluate the offers as per the provisions of this law and the rules of procurement procedures, and after determining responsive bids prepare a report on the evaluation and comparison of bids in accordance with the criteria set forth in the bidding documents, The evaluation report shall be so organized as to demonstrate clearly the quantitative and qualitative advantages and disadvantages of the responsive bid. The report shall include any dissenting opinions, if any.
- (2) The bids evaluation committee shall submit the report mentioned in sub-article (1) of this Article to the award authority for decision-making and approval.
- (3) If the successful bidder fails to conclude a contract within the bid validity period, the entity shall offer the contract award to the next qualified bidders in the order of their ranking in the evaluation of bids.
- (4) The entity shall send a bid acceptance letter to the successful bidder after publishing contract award notice.  
If the contract award value exceeds the threshold limit of award authority, an offer acceptance letter will be sent to the successful bidder after approval of award by the National Procurement Commission.

### **Contract Award**

#### **Article 24**

The Entity must award the contract to the successful bidder in accordance with the provisions of this law, requirements of bidding documents and provisions of Procurement Procedure.

### **Rejection of Bid and Cancellation of Proceedings**

## **Article 25**

- (1) The entity may reject all bids prior to contract award or cancel the procurement proceedings to maintain national interest in accordance with the provisions of this Law. In this case the reason for rejecting or canceling the procurement proceedings shall be noted in the records of the procurement proceedings and promptly communicated officially to all bidders.
- (2) If a decision to cancel the procurement proceedings is taken before the bid opening session, the bids received shall be officially returned unopened to the bidders.
- (3) The entity shall not be liable to the bidders for the rejection of bids or cancellation of procurement proceedings.

## **Unsuccessful Proceeding**

### **Article 26**

When no responsive bid has been received in response to invitation for tendering or after evaluation, the entity shall prepare a report about the issue or, if necessary, propose to adjust the bidding documents or request for proposal using alternative methods of procurement stated in this law and in the procurement procedures and submit it to award authority for approval.

## **Procurement Infrastructure and Award of Concessions**

### **Article 27**

Contracts for private investment in construction and/or operation of public works and services against awarding concessions for use (Public-Private Partnership) will be regulated by a separate regulation.

## **CHAPTER FOUR Procurement Securities**

### **Types of Securities:**

#### **Article 28**

- (1) The following securities shall be required from the bidders and contractors:
  - a. Bid Security is required to secure bidders obligation to enter into a procurement contract. Required fund for bid security [without taking into account the price of the offer] is set as a specific amount of money in accordance with bidding documents. This security can be submitted as cash, bank guarantee or any equivalent financial asset acceptable to the procuring entity.
  - b. Contract performance guarantee is required to secure contractors obligation in the contract, and its type, validity period and amount shall be set in the



bidding documents or request for proposal. This guarantee will be refunded after the contractual obligations of the contractor are met.

- c. Advance Payment Guarantee is required to secure commitments of contractor in repaying the advance payment mentioned in article 33 of this law. The advance payment guarantee shall be returned to the contractor upon deduction of advance payments from payments to the contractor.
- d. Retention Money, withhold from the payments to the contractor by observing the conditions set forth in contract, shall be transferred and kept in a special bank account determined by the Ministry of Finance.

(2) The entity is obliged to manage record and maintain the securities stated in sub-article (1) of this article in accordance to Procurement Procedure.

(3) The security mentioned in paragraph (1) of sub-article (1) of this article may be managed, recorded and maintained in National Procurement Authority if procurement facilitation is provided by the National Procurement Authority.

(4) The description of securities mentioned in sub-article (1) of this article and the procurement which does not require securities shall be foreseen in the Procurement Procedure.

(5) In addition to the securities under sub-article (1) of this article, the National Procurement Authority may add and apply new securities to the Procurement Regulation, as necessary.

The total of the securities under section 2 and 4 of sub-article (1) of this article shall comprise up to (15%) of the total price of the procurement contract.

### **Refunding Securities**

#### **Article 29:**

(1) Securities mentioned in article 28 of this law, will be refunded according to the conditions set forth in bidding documents, request for proposal and the contract.

(2) In compliance with bidding documents, a bid security shall be fortified in the following circumstances:

- a. Modification or withdrawal of a bid after the deadline for submission of bids;
- b. Refusal by a bidder to accept any corrections of an arithmetical error appearing on the table of prices of the bid;
- c. Failure by the successful bidder to sign a contract in accordance with the terms set forth in the bidding documents;
- d. Failure by the successful bidder to provide the performance security as required by bidding documents;
- e. In case of debarment of the bidder according to the article 49 of this law;
- f. Other cases mentioned in Procurement Procedures.

- (3) Circumstance and conditions for forfeiting other types of securities will be described in Procurement Procedures.

## **CHAPTER FIVE CONTRACT ADMINISTRATION**

### **Contract Modification**

#### **Article 30**

- (1) Modifications in duration and volume of contract shall be made considering available budget allocation and allotment and existence of justifications approved by award authority in accordance with Procurement Procedure.
- (2) Contract modification stated in sub-article (1) of this article shall not change the basic nature and scope of contract.
- (3) Maximum permissible modification of contracts will be foreseen in Procurement Procedures.
- (4) Contract modification that would increase or decrease the value of the contract by up to the percentage foreseen in Procurement Procedures will be applicable after approval and compliance with the provisions of paragraph (2 and 3) of article 63 of this law.
- (5) A contract modification that would increase the value of contract more than the permissible limits foreseen in Procurement Procedures shall require initiation of a new procurement proceeding.
- (6) Contract time modification shall be allowed before the expiration of contract, in circumstances that procurement cannot be done on time based on good justification, in accordance with the conditions of the contract, rules of Procurement Procedures and the provisions of article 63 of this law.
- (7) In case the entity cannot process the payments due proportional to the work progress, or perform its obligations within the time limit specified in the contract and, as a result, the contractor cannot continue the work, the period of the delay shall be added to the contract period.
- (8) Any modification without compliance with the provisions of this article shall not be calculated and paid for.

### **Contract Price Adjustment**

#### **Article 31**

- (1) Contract price may be adjusted proportionate to changes in cost and expenditures considering allocated budget and allotment in accordance with the rules of the Procurement Procedures and contract conditions.
- (2) The entity is obliged to include the justifying factors for price adjustment (increase or decrease in the material, labor, energy, currency, custom duties, etc.), formulas and

indicators, price adjustment amount and methods in the bidding documents and contract.

- (3) The procurement contract shall be terminated or subject to re-negotiation, if price adjustment exceeds the percentage foreseen in Procurement Procedures.

## **Payments**

### **Article 32**

- (1) The entity is obliged to include the payments proportional to the progress of work at specific phases of contract performance by having in view as the completion of a percentage of specified activities, the obligations met by contractor and compensation for the delay, in the procurement contract.
- (2) The procurement contract shall provide for the manner and retention of percentage of the progress payment as retention money.
- (3) A progress payment will be made based on the Certificate that confirms the conditions for payment in accordance with contract. In case of delay, the provisions of article 39 of this law shall apply.
- (4) The entity pays the procurement fund to the contractor provided that the assigned committee have checked and verified the procurement as well as having approved and signed the goods delivery or performing services and/or work progress or completion by recording them date-wise in accordance with the provision of articles 59 and 60 of this law.

## **Advance payment**

### **Article 33:**

- (1) The entity may determine the amount of advance payment in bidding documents if the advance payment is deemed necessary for effective implementation of contract and securing obligation of contractor.
- (2) Advance payment shall not be made unless an advance payment guarantee is furnished in accordance with the provisions of section (3) of paragraph (1) of article 28 of this law.
- (3) The contractor shall utilize materials, equipment and labor acquired with the advance payment only for fulfillment of the procurement contract under which the advance payment was made.
- (4) The percentage of advance payment and other issues related to this will be foreseen in Procurement Procedures.

## **Internationally Recognized Trade Terms**

### **Article 34**

Import of goods, method of transfer, scope of responsibility with regard to risk of loss, delivery, transport insurance, and export and import formalities, will be executed as provided in the bidding documents and procurement contract.

### **Inspection of Contractor's Performance**

#### **Article 35**

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

### **Subcontracting**

#### **Article 36**

- (1) The contractor may sub-contract part of the contract on condition that:
  - a. Sub-contracting is provided in the bidding documents and in the contract.
  - b. Written consent of the entity is obtained.
  - c. Sub-contract does not contradict prime contract.
- (2) Consent to a subcontract, stated in the sub-article (1) of this article may be granted on condition that it does not affect any other responsibility of the contractor under the procurement contract, and the sub-contractor shall be qualified to carry out the sub-contracted duties and be committed to meet the obligations of the prime contract.
- (3) Conditions, procedures for sub-contracting and its permissible limits shall be foreseen in Procurement Procedure.

### **After-Sale Services and Insurance**

#### **Article 37**

- (1) The contractor, as provided in the contract, shall repair or replace and provide spare parts for goods that require after sale services.
- (2) The entity shall state the amount and essential terms of the required insurance in the contract. The insurance which does not comply with the requirements of the contract shall be rejected.

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

### **Article 38**

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

- (i) Rejection, remedy and replacement of defective performance;
- (ii) Prompt removal and replacement of defective goods;
- (iii) Cash penalty for delay, in accordance with the provision of article 39 of this Law.
- (iv) Termination of the contract for default and procurement of replacement performance, at the expense of the defaulting party;
- (v) Other remedies applicable pursuant to the contents of Procurement Procedure.

## **Penalty for Delay and Bonus Award**

### **Article 39**

- (1) The Procurement Contract and bidding documents shall provide cases of delay in contract performance by the entity and the contractor. Such a clause shall specify:
  - a. The agreed sum to be paid per time-unit (day, week or month) of delay;
  - b. The maximum penalty amount
- (2) The contractor entity shall pay the penalty for delay agreed, if he/she delays the contract performance.
- (3) The payment of penalty for delay does not affect contractor's or the entity's other liability as stipulated in the contract.
- (4) Penalty does not apply if the delay is beyond the control and without the fault or negligence of the contractor.
- (5) If contract performance as stipulated in the contract is fulfilled ahead of time benefiting the entity, the entity may award a bonus for the contractor. Conditions of bonus award will be regulated in Procurement Procedure.

## **Damage Compensation**

### **Article 40:**

- (1) In case of shortage of quantity or number, loss or damage to procurement, the procuring entity should claim for the payment of damage compensation from the contractor as per Procurement Procedures.
- (2) In case of damage inflicted to individuals, public or private assets originating from contractor's performance, the contractor will be liable to pay damage compensation as per this law and respective legal documents.
- (3) If the contract gets cancelled due to violation by contractor, the contractor is to pay compensation based on Procurement Procedures.

- (4) If the contract gets cancelled due to violation by the entity, the entity and its concerning employees shall be responsible to pay the compensation based on Procurement Procedure.

### **Contract Termination and Cancellation**

#### **Article 41**

- (1) The procurement contract terminates when all obligations and terms stated in the contract are met.
- (2) The conditions upon which a contract is cancelled, shall be stated in the contract that includes the followings:
- a) Cancellation of the contract by the entity for failure of the contractor to meet his commitments and contract requirements.
  - b) Cancellation of the contract to ensure national interest.
  - c) Cancellation for impossibility of fulfillment of the terms of the contract due to force majeure.
  - d) Other circumstances indicated in the Procurement Procedure.
- (3) Contract can be cancelled by award authority pursuant to the provisions of sub-article (2) of article 63 of this law.

**CHAPTER SIX**  
**TRANSPERANCY AND ACCOUNTABILITY**

**Transparency Principles**

**Article 42:**

- (1) The entity is obliged to exercise the following actions in order to provide accurate information on procurement process to the public and bidders access to the information:
  1. Publishing procurement announcements through printed and broadcast media, and other approaches of communication foreseen in Procurement Procedures.
  2. Publishing Bidding documents, invitations, requests and required instructions for preparing bids in procurement proceedings through the entity's website or National Procurement Authority's website.
  3. Publishing list of all signed contracts in the entity's website and other websites approved by the National Procurement authority.
- (2) All communication between the entity and the bidder or contractor shall be in writing, unless the Law or the National Procurement Authority has approved otherwise.
- (3) Other related issues will be foreseen in Procurement Procedures.

**Notice of Contract Award**

**Article 43**

- (1) The entity shall advertise the notice of contract award to the successful bidder by mentioning the name and address of the bidder, the total price of the winning offer and the period foreseen in Procurement Procedure for objections, after the approval of the evaluation report by the awarding authority through mass media.
- (2) The entity shall formally inform all unsuccessful bidders simultaneously by advertisement of the notice stated in sub-article (1) of this article.
- (3) The entity cannot award the contract to successful bidder or submit it for approval before the due date of the notice stated in sub-article (1) of this article and or prior to addressing the complaints of the bidder stated in article 50 of this law.
- (4) Single-source contracts are not subjected to this article.

**Rights of Unsuccessful Bidders**

**Article 44**

- (1) The unsuccessful bidder may seek clarification on the reasons of rejection of its application to pre-qualify, or of its bid, by submitting a written application to the respective entity.
- (2) The entity shall promptly communicate the justifications for the rejection of the application to pre-qualify or the offer to the bidder.

### **Maintaining Procurement Documents and Reports:**

#### **Article 45**

- (1) The procuring entity has to collect and maintain a record of its reports and procurement proceedings, which include the following:
  1. Description of the procurement;
  2. List of the participating bidders and their qualifications;
  3. Bid prices;
  4. Summary of the evaluation of bids, summary of any review proceedings, and the related decisions;
  5. Requests for clarifications and any responses thereto;
  6. justification on selection of procurement method other than tendering or request for proposals
  7. Information concerning the reason for the rejection of the offer or the cancelation of procurement proceedings pursuant to the provisions of sub-article (1) of article 25 of this Law.
  8. Collection of applicable legislative documents on procurement proceedings publicized in printed form or electronically.
  9. Other cases foreseen in Procurement Procedure.
- (2) The records stated in sub-article (1) of this article shall be made available to the bidders based on request after a bid has been accepted, unless otherwise approved by Law, competent court or the National Procurement Authority.
- (3) The entity shall prepare and provide the documents in sub-article (1) of this article to bidder while preserving the confidentiality of relevant commercial information.
- (4) The entity shall prepare and submit a summary report of procurement contracts and detailed reports on their procurement activities to the National Procurement Authority in accordance with the relevant procedures prescribing the content, format, and the frequency and dates for submission.

### **Contract Record**

#### **Article 46:**

The entity must send the awarded procurement contract to the National Procurement Authority for recording and in order to collect required information as per Procurement Procedure.



## **Obligation of Procurement Officials**

### **Article 47:**

- (1) Each procurement staff shall comply with the following points while performing relevant affairs:
  1. Supervise the decisions taken based on adequate information and good faith regarding procurement, , for better application of the provisions of this law and to maintain the best interest of the Nation, in accordance with this Law;
  2. Assure that all bidders enjoy similar conditions in procurement proceedings and contract awards;
  3. Avoid, direct or indirect, personal interest and falsification of documents in the relevant actions.
  4. Ensure that there is no direct or indirect conflict of interests
  5. Ensure that there is no falsification of document and solicitation of favors, and promptly report violations to relevant authorities;
  6. Avoid revealing the confidential information in connection with procurement proceedings, received bids, bidders and information concerning property of bidders.
  7. Avoid providing false information in order to influence procurement proceedings.
  8. Avoid collusion with bidders, procurement staff and third party in procurement proceedings.
  9. Avoid interfering in bidder's participation that will affect the transparency of procurement proceedings.
- (2) In the event of violation from the provisions of this law procurement employees, in addition to disciplinary actions shall be subjected to prosecution as well.
- (3) No individual or official can influence procurement officials or use his or her position to persuade procurement officials to avoid conducting their duties or perform activities that they do not have the obligation to perform.

## **Obligations of Bidders and Contractors**

### **Article 48**

- (1) Bidders and contractors shall abide by the following obligations under this Law:
  - i. A bidder or a contractor shall not provide false information in order to influence a procurement proceeding, including the award of a procurement contract;
  - ii. Avoid falsification of documents or proposal and promising to favor someone either directly or indirectly;
  - iii. Avoid collusion with all bidders and procurement officials concerning bidding process.

- iv. Avoid any use of violence, threat or influencing performance of procurement officials either directly or indirectly.
  - v. Avoid false accusation and claim against the entity or relevant officials either directly or indirectly.
  - vi. Avoid interfering in bidder's participation/competition that will affect transparency of procurement proceedings.
  - vii. Avoid disclosing secrets of other bidders;
- (2) The contractor shall not further contract the awarded contract with a second person. Sub-contracting in accordance with the provisions of this law shall be an exception.
- (3) The contractor shall not replace its key personnel, unless the replacement will accomplish the contract's objectives better. In this case the contractor shall obtain the agreement of the entity in writing and the proposed personnel must have the same or better qualifications.
- (4) Bidders that one of their proprietors (the Head or deputy head) has already participated in the bidding cannot participate in the same tendering.
- (5) The entity has the obligation to refer the violations of sections (2, 3, 4, 5 and 6) of sub-article (1) of this article to the judicial authorities for persecution.

### **Debarment of Bidders and contractors**

#### **Article 49:**

- (1) The National Procurement Authority shall debar a bidder or contractor from participation in a procurement process in the following cases for a period that shall not be less than two and more than 5 years, as appropriate:
1. Inobservance of the provisions of article (48) of this law.
  2. If it is proved that the bidder had violated the terms and condition of a completed procurement contract that had not been debarred.
  3. Sentenced to punishment for violating a procurement contract or sub-contractor.
  4. In case of the conviction of contractor and cancellation of contract as a result of the violation of contractor from the terms and conditions of contract or not accomplishing his/her commitments.
- (2) If any of the violations specified under paragraph (1) of this article is repeated by the bidder or contractor, the National Procurement Office shall debar him for five to ten years, and in case the violation is repeated again shall debar him permanently from participation in procurement proceedings.
- (3) In circumstances detailed in paragraphs (1 and 2) of this article, the entity should promptly refer the issue, along with the documents and witnesses incidental to the violation, formally to the National Procurement Authority.
- (4) In case of deprivation of a bidder or contractor, the entity shall take the following actions:

1. Do not refund bid securities of the bidder in compliance with the provisions of article (29) of this law
  2. Performance security or an amount equivalent to that will be deducted from his/her payments or retention money.
  3. In case of unavailability of securities, the entity in coordination with the General Attorney Office shall retrieve the amount of securities from the contractor or bidder.
- (5) If a bidder or contractor is debarred from participation in procurement proceedings as per the provisions of paragraphs (1 and 2) of this article, he is entitled to seek review by submitting a written application to the Evaluation Committee specified in paragraph (2) of article (50) of this law within the period specified in Procurement Procedures, by providing explicit justification for review.
- (6) Bidder's and contractor's deprivation process shall be regulated in separate procedures.

### **The Rights for Objection and Review**

#### **Article 50**

- 1) If the bidder experiences a loss as a result of violating the provisions of this law, he/she can appeal about the issue to the respective entity within the period specified in contract award notice.
- 2) To address the request for review and contemplation regarding the objections/complaints, the President of Afghanistan shall assign an Administrative Review Committee comprising of expert officials for this purpose.
- 3) In circumstances of paragraph (1) of this article, the entity shall officially communicate its response to the bidder within the period stipulated in Procurement Procedures. In case the bidder is not convinced regarding the response of the entity, he/she can submit a request along with his/her justification to the Administrative Review Committee for review.
- 4) The decision of the Administrative Review Committee shall be final.
- 5) The activities of the Administrative Review Committee shall be organized in separate procedures.

### **Contracts dispute Resolution**

#### **Article 51**

- 1) The procedures and bodies for procurement conflicts settlement, its implementation, delays, payments, obligations and other relevant issues shall be stipulate in the contract.
- 2) The President of Afghanistan shall assign a commission comprising of experts for the settlement of contract disputes and disagreement.

- 3) The decisions of the Procurement Disputes Settlement Commission shall be final.
- 4) The approach and functioning of the Procurement Disputes Settlement Commission shall be regulated in a separate procedure.

### **Cooperation with Oversight Authorities**

#### **Article 52**

- 1) Entities, their related officials, and other concerned personalities involved in procurement shall extend full co-operation to the National Procurement Authority, and other bodies exercising monitoring and supervision of procurement proceedings in conformity with respective legislative documents.
- 2) The personalities and entities specified in paragraph (1) of this article have the obligation to carry out the monitoring and supervisory functions of the procurement proceedings pursuant to the provisions of this law and Procurement Procedure.

## **CHAPTER SEVEN FUNCTIONS OF PROCURING ENTITIES**

#### **Article 53:**

- 1) In Cooperation with the National Procurement Authority the entity is obliged to provide opportunities for the capacity building of its related procurement Personnel.
- 2) The entity is assigned to manage and execute contracts, as per the requirements specified in the contract within timeline, supervise and monitor its effective completion and execution in conformity with the provision of Procurement Law and rules of Procurement Procedures.
- 3) The entity is obliged to perform the proper maintenance of completed projects during the respective depreciation time periods consistently and effectively.
- 4) The entity is obliged to evaluate and control the quality and quantity of the goods, services and construction work.
- 5) The entity's Procurement Department shall have the following duties:
  - 1- Preparation of Procurement Plan
  - 2- Preparation of bidding advertisement, procurement approach of submitting requests, bidding documents, request for proposal and other procurement documents and their timely publicity and distribution.
  - 3- Reception of offers and request for proposals and handing them over for processing
  - 4- Organizing contract documents based on the provisions of this law.
  - 5- Facilitating the enforcement of articles (8 and 9) of this law.

- 6- Ensuring the observation of related legal documents during the inventory of warehouse by the inspection committee
  - 7- Monitoring and consistent control and preparation of annual report regarding the inventory of warehouse commodities
  - 8- Registration of contracts in the database of the entity and database of the National Procurement Authority in line with the provisions of article 46 of this law, and maintaining the soft- and hardcopies of the documents.
  - 9- Performing other related duties as per the provisions of the Procurement Law and Procedures.
- 6) The officials responsible for the inspection (audit) of procurement affairs or award authorities cannot be members of the Offer-Opening, Evaluation and Inspection Committees.

## **National Procurement Commission**

### **Article 54**

- 1) A National Procurement Commission comprising of the Ministers of Finance, Economy and Justice shall be established by the President of Islamic Republic of Afghanistan to review and approve procurement contract awards beyond the threshold limit of award authority and to determine the duties and limits of authority of Procuring entities;
- 2) The award authority of the entity shall have the obligation of signing and execution of the contract and shall respond to the President of the Islamic Republic of Afghanistan and to the National Council.
- 3) The National Procurement Commission shall review submitted contracts for approval and will decide about their approval or rejection within maximum twenty-eight (28) working days from the date of receipt of complete contract documents; otherwise the contract shall be considered approved.
- 4) The National Procurement Commission shall revise the scope of duties and limits of authority of procuring entities based on the need and proposal of the National Procurement Authority.
- 5) In special cases, the National Procurement Commission shall make appropriate decisions considering the national interests and the prevailing conditions in the country.
- 6) The National Procurement Authority shall establish the National Procurement Commission Secretariat to manage and coordinate the contracts included at the level of National Procurement Commission's authority.
- 7) The activities of the National Procurement Commission and its respective secretariat and their approaches of execution shall be regulated by separate procedures.

## **Establishment of Special Administration or Mechanism for Procurement of Commonly Used Items**

### **Article 55**

The Government may establish a special administration or mechanism for the procurement of the goods or services commonly used by the procuring entities.

## **National Procurement Authority**

### **Article 56**

- 1) The National Procurement Authority is to operate to improve the procurement system, preparation of policy, professional development, consolidation of procurement plans, monitoring procurement proceedings, facilitating procurement affairs and monitoring progress of contract implementation.
- 2) The National Procurement Authority shall report to the National Procurement Commission on its executions.

- 3) The functions of the National Procurement Authority shall be regulated in separate procedures that will be approved by the National Procurement Authority

## **Functions and Powers of the National Procurement Authority**

### **Article 57**

(1) The National Procurement Authority shall have the following duties and powers:

- 1- Monitor and supervise procurement proceedings to ascertain its efficiency and transparency and compliance with the provisions this Law and rules of Procurement Procedures;
- 2- Monitoring the progress of contracts implementation in accordance with the rules of Procurement Procedures.
- 3- Prepare and approve procurement policies, procedures, directives, regulations, circulars, bidding documents and other standard documents in order to improve and consolidate procurement processing, and their circulation to government entities.
- 4- Evaluate the entities' procurement capacities and granting procurement capacity certificate;
- 5- Debar bidders and contractors
- 6- Refer violations of this Law to the relevant authorities for prosecution;
- 7- To carry out economic studies on procurement and estimations, so as to collect information to make proper decisions;
- 8- Prepare and approve policy to facilitate the use of information technology in Procurement
- 9- Implement measures aimed at developing human resources and professionalism for procurement, organizing training programs, and awarding certificates and managing the cadre and professional affairs of employees and assignees in procurement in accordance with the rules of Procurement procedures.
- 10- Evaluate and review any revisions to the threshold limits for award authority, based on the need, and propose it to the National Procurement Commission.
- 11- Execution of any other functions according to the provisions of this law and the rules of Procurement Procedures.

(2) The National Procurement Authority shall not act as an award authority for entities.

(3) The National Procurement Authority's monitoring and oversight functions shall not prevent any oversight or audit functions by other authorized entities as per the provisions of this law.

## **Organizing Procurement Plan of Goods**

### **Article 58**

The procurement plan of goods shall be organized so that to prevent their waste and loss, to ascertain the continuous availability of supplies, and to obtain a fair return of value upon disposal of surplus supplies.

## **Acceptance or Rejection of Goods**

### **Article 59**

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



## **Verification of Procurement Conformity with Contract Requirements**

### **Article 60**

- 1) The Inspection Committee and other persons involved in the procurement shall verify that the procurement performed conforms to the requirements of the procurement contract.  
If procurement does not conform to the requirements of the procurement contract the responsible entity or persons shall immediately report the issue to the award authority.
- 2) The entity shall, either separately or jointly with other concerned entities, as appropriate, provide the opportunity for inspection of the procurement.
- 3) Where appropriate, the entity may appoint a Special Technical Committee, for re-inspection and acceptance of performance for specific cases, as per the rules of Procurement Procedures.
- 4) The internal auditor, supervising engineer or the Inspection Committee shall report regularly on their procurement activities to the entity in accordance with rules of Procurement Procedures.

## **Warehouses and Stores**

### **Article 61:**

- (1) The Government may establish warehouses and stores to:
  - 1- store goods required by entities;
  - 2- Store durable supplies in excess of entities' current needs;
  - 3- Store materials required for crises and emergencies;
  - 4- Manage stock levels according to historical use and projected needs for the future.
  - 5- Other conditions included in Procurement Procedures.
- (2) Warehouse and stores' managers are obliged to prepare reports about the recording, inventory and transfer of goods and submit them to concerning authorities.
- (3) Warehouse employees are responsible for providing safe storage suitable to the types of goods, and keep them ready for delivery upon request.
- (4) Inventory related affairs will be regulated by a separate procedure.

## **Surplus Property**

### **Article 62**

- (1) In agreement with the Ministry of Finance the entity may sell, lease or let, whatever is more suitable for the government, movable and immovable properties in excess of the entity's needs, after making sure they are not needed or cannot be used by other entities, in accordance with the provisions of relevant rules.
- (2) 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.

- (3) The Ministry of Finance shall provide the report mentioned in paragraph (2) of this article to other entities to determine whether any such goods would meet their needs.
- (4) The Ministry of Finance must specially notify educational institutions about surplus computer equipment and means of transport of entities.
- (5) Essential budget entries shall be made, in accordance with the provisions of relevant laws, for goods transferred among entities.
- (6) The Ministry of Finance shall assess the funds obtained from the sale and lease of state properties annually, and shall transfer them to the government revenue account.

### **Approval of contracts**

#### **Article 63**

- (1) The level of the threshold limit of award authority for procurement is determined upon recommendation of the National Procurement Authority and approval of the National Procurement Commission.
- (2) Contracts shall be approved by award authority, in line with the threshold limit of award authority.
- (3) When a contract award would exceed award authority's threshold limits, the award authority must confirm the contract award before submitting it to the National Procurement Commission for approval.
- (4) Award Authority may partially or in full delegate the powers of his/her threshold limits to the heads of the secondary units, Deputy Ministers or Directors of the relevant entity, in conformity of the provisions of relevant legal document.

## **CHAPTER EIGHT**

### **Final provisions**

#### **Special Procurement Arrangements:**

##### **Article 64**

- (1) For better application of the provisions of this law, and until the time that essential measures are taken for the effective management of expenditures and capacity building of procurement departments of the center and provinces, the National Procurement Commission may approve special arrangements for procurement, ,
- (2) The special arrangements may include the provision of facilities for procurement, with full observation of the provisions of article 54 of this law, or by creating units, committees or commissions as per the provisions of paragraph (1) of this article by the National Procurement Authority.
- (3) The National Procurement Commission shall decide regarding the continuation or cancellation of the special procurement arrangements, as appropriate.

#### **Warnings**

##### **Article 65**

- (1) A Person who is benefitted or becomes the cause for benefitting another person or incur a loss or damage to the state by violating the provisions of this Law shall be sentenced to punishment and the payment of compensation, as per relevant law,.
- (2) The amount of compensation shall be determined by an authorized court by having in view the extent of the acquired benefit or the loss or damage incurred.
- (3) If a entity carries out procurement or sign a procurement contract beyond the threshold limits of its award authority or without consideration of the provisions of this law, in addition to the payment of compensation it shall also be legally pursued.

#### **Issuance of regulations and procedures**

##### **Article 66**

For better implementation of the provisions of this law, the National Procurement Authority may propose regulations and issue guidelines, manuals and procedures provided that they do not contradict with the provisions of this law.

#### **Numbers of Committee Members**

##### **Article 67**

The number of the members of the Evaluation, Inspection and Bidding Opening Committees described under paragraphs 18, 19 and 20 or article three and other parts of this law shall not be less than three (3) persons.

## **Date of Effectiveness**

### **Article 68**

This law shall be effective upon signature and shall be published in the *Official Gazette*. On the effectiveness of this Law, the Procurement Law published in official gazette no.957 (1387), and its amendments published in official gazettes no. 971 (1387) and 1168 (1393) and other provisions conflicting this law are nullified.