



Project Title:

Consultancy Services For Online Business Process Outsourcing Work Platform

Deliverable:

Review existing laws related to the procurement of services within Khyber Pakhtunkhwa government.

Submitted To:

Khyber Pakhtunkhwa Information Technology Board

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Revision History

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Client Information

Client Name	Khyber Pakhtunkhwa Information Technology Board.
Project Name	Hiring of Consultancy Services For Online Business Process Outsourcing Work Platform

Abbreviations & Acronyms

Sr#	Abbreviation	Description
1	KPITB	Khyber Pakhtunkhwa Information Technology Board
2	BPO	Business Process Outsourcing
3	ICT	Information and Computer Technology
4	FRS	Functional Requirement Specification
5	SRS	Software Requirement Specification
6	KP	Khyber Pakhtunkhwa
7	PE	Procuring entity
8	KPPRA Act 2012	Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act No.XI of 2012)
9	KPPRA Rules 2014	Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014

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1 Background

The Khyber Pakhtunkhwa Information Technology Board (KPITB) is a public sector autonomous organization established under an Act of the Khyber Pakhtunkhwa Assembly in May 2011 for the promotion of Information Technology, Information Technology enabled services and Information Technology enabled education for the private sector of the Province of the Khyber Pakhtunkhwa.

In 2018, through an amendment to the Act, the Directorate for Information Technology, the public sector entity responsible for digital services, was merged into the KP IT Board. This merger means that the KP IT Board is now the single entity for the promotion of digital development initiatives in the province. As an autonomous body—with a mandate to work across the public and private sectors—the Khyber Pakhtunkhwa Information Technology Board (KPITB) is uniquely poised to coordinate the different stakeholders in the province around a common vision: more jobs, better services, and improved governance through ICTs.

In line with the Digital KP strategy, KPITB has embarked on an ambitious agenda to support youth inclusion in the digital economy as a vehicle for job creation and growth in the province. The digital jobs program focuses on both building a talent pool of digital workers as well as addressing unemployment in the short term by connecting young IT professionals in Khyber Pakhtunkhwa to opportunities in the global digital economy.

Therefore, the program focuses not only on short term needs, but on the longer-term strategy to transform Khyber Pakhtunkhwa's digital economy.

2 Purpose

KPITB has engaged CyberVision International to develop a platform to connect freelancers/tech startups with potential employers. CyberVision International will design and develop a customized, user-friendly web portal/online outsourcing platform that will be the first online space to connect skilled freelancers and tech startups with KP provincial government as well as work from private sector.

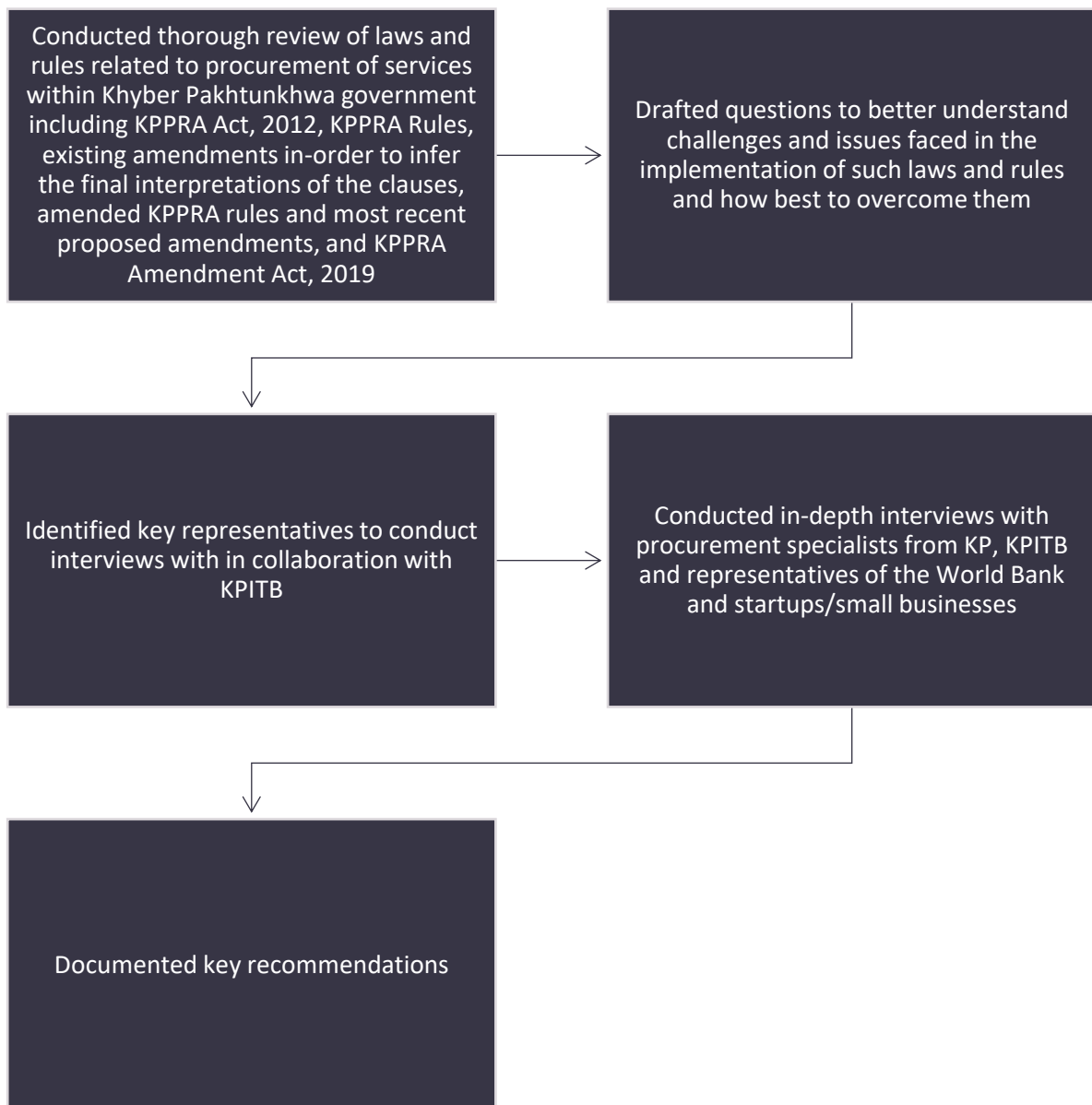
At the start the demand for skilled freelancers/tech startups will be driven by the provincial government departments that intend to digitize their processes and services. Therefore, this platform will act as an intermediary between government departments and freelancers/tech startups.

In the initial phase of the project, different provincial departments will be able to upload their ICT related projects online to procure the services of freelancers. Projects that meet the permissible cost limit as per the prevailing procurement laws will be published on the online platform. Resultantly, this platform will prove to be advantageous for a large number of individuals and firms who are a part of the Information Technology Industry in Khyber Pakhtunkhwa.

3 Methodology

One of the tasks under this project was to review existing laws related to the procurement of services within Khyber Pakhtunkhwa government. These included the Khyber Pakhtunkhwa Procurement of Goods, Works and Services Act, 2012 (KPPRA Act 2012); KPPRA Amendment Act 2019; the rules (KPPRA Rules 2014) made thereunder; amended KPPRA rules; as well as existing amendments issued through various notifications by KPPRA from time to time in-order to infer the final interpretations of the clauses, and most recent proposed amendments.

For successful completion of this task, CyberVision undertook the following steps:



3.1 Review of Laws and Rules Related to Procurement of Services

For the purpose of this assignment, CyberVision conducted a thorough review of The Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act No. XI of 2012) (first published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa (Extraordinary), dated the 20th September, 2012) and the final amended Act (as amended vide the Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment) Act No. XXX of 2016; (Amendment) Act No. XII of 2019; and (Second Amendment) Act No. XIII of 2019.

The Act provides for the legal and regulatory framework for public procurement. As per clause 36: "Power to make rules.--- Government may make rules for carrying out the purposes of this Act."

Subsequently, in exercise of the powers conferred by section 36 of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act No.XI of 2012), the Government of the Khyber Pakhtunkhwa made Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014.

CyberVision studied the Act and Rules in their entirety; the Rules with amendments incorporated; as well as the most recent proposed amendments to the Rules. Recommendations are made regarding consultancy and non-consultancy services for the purpose of designing the software.

3.2 Questions for Key Informants

In order to better understand challenges and issues faced in the implementation of such laws and rules and how best to overcome them, a list of questions was developed for key informants. The questions provided structure during the subsequent one-on-one interviews with the key informants. Structure of the procurement department:

1. Is there a specific department that is responsible for public procurement?
2. What is the normal structure of the procurement department?
3. Are there designated personnel who are responsible for procurement?
4. What is the method through which different departments interact with the procurement department to communicate their procurement needs?

5. What are the normal process flows between other departments and the procurement department?
6. Do all the departments prepare an annual procurement plan?
7. How frequently is the procurement plan updated?
8. Is the procurement plan published anywhere – government department website/KPPRA website?
9. What are the hurdles, if any, in procurement of services in the present scenario?
10. What amendments, if any, would make the procurement process more efficient and smoother?
11. What is the existing technical skillset, knowhow and comfort in using digital platforms within government departments?
12. What are some suggestions on how to onboard more freelancers/tech startups and small businesses?
13. Who determines the eligibility criteria for public procurement of consultancy services?
14. Do existing Rules facilitate procurement of services by freelancers, micro and small businesses and startups?
15. What policies and rules need to be changed to enable more freelancers, micro and small businesses and startups to compete for public procurement of services?
16. Do procurement departments utilize single source or direct selection method for public procurement of services?
17. How often does your organization utilize single source or direct selection method for public procurement of services?
18. Would you recommend any changes to the payment process or is it smooth enough?
19. How long does it take on average to process payments?
20. What amendments are required to enable all procurements of consulting services to be uploaded through the online outsourcing portal?
21. Are there any specific eligibility criteria for micro and small businesses, startups, freelancers?
22. What approach should be adopted for e-procurement?
23. Should the ceilings be revised for recruitment of firms for public procurement of services?
24. Should the ceilings be revised for recruitment of individuals for public procurement of services? If yes, what should the revised limits be?
25. What about the duration of contracts?
26. Is the bid submission time adequate or too lengthy?
27. Is the bid evaluation process efficient or could it be improved and how?
28. Is the grievance process efficient or could it be improved and how?

29. What are the major reasons that small and medium businesses, startups, microenterprises don't apply for consultancy services?
30. What recommendations do you have to enable micro and small businesses and startups to apply for public procurement?

3.3 Key Informant Interviews with Procurement Specialists and Startups/Small Businesses/Freelancers

In order to understand the gaps in KPPRA Act 2012 and KPPRA Rules 2014, CyberVision undertook a first-hand research with World Bank, KPPRA and procurement specialists and relevant officials within government departments who had been identified with the help of KPITB. CyberVision also consulted startups and small businesses to receive input from them regarding their experience.

At the beginning of each call, the researcher provided a brief introduction about the project and the purpose of the call. The researcher explained that KPITB had engaged CyberVision International to develop a platform to connect freelancers/tech startups and small businesses with potential employers, including government departments. In order for the platform to function effectively, it was important to examine the following:

1. Whether there were any limitations in existing legal structures
2. If any limitations existing in implementation of KPPRA Rules 2014
3. What were the key recommendations that could improve them

In-depth interviews were conducted with the following individuals:

1. Mr. Shafi Ur Rehman, Procurement Specialist at Governance & Policy Project, FATA (GPP-FATA), FATA Secretariat, World Bank Project
2. Mr. Haider Raza, Senior Procurement Specialist, World Bank
3. Mr. Mohammad Qasim Khan, Director Capacity Building and Donor Coordination at Khyber Pakhtunkhwa Public Procurement Regulatory Authority
4. Muhammad Bilal, KPITB
5. Muhammad Saleem, AD Procurement, WSSP
6. Hassan Bashir, Co-Founder, SidRack
7. Sana Tehseen Durrani, Freelancer and Co-Founder, The Blue's Studio
8. Haider Ali Baig, Founder & CEO, The Reformists

The interviews were aimed at better understanding the law and rules pertaining to procurement in KP government, the challenges or gaps in their implementation, improvements that could be made for ease of doing business, especially to facilitate startups, small businesses, microenterprises and freelancers. Also, these interviews helped identify challenges faced by small businesses, startups and freelancers, so that effective solutions could be developed. Based on literature review and key informant interviews, CyberVision is proposing the following necessary amendments.

4 Key Findings and Recommendations

Based on documents review and interviews, CyberVision believes that a few amendments can be made to the KP Rules 2014 to encourage participation of startups, small businesses, microenterprises and freelancers in government projects. These amendments are highlighted in the section below.

Furthermore, government departments procuring consultancy services may also need to examine their eligibility criteria to identify if certain criteria may be prohibitive in nature for startups, freelancers, microenterprises and businesses to apply and/or be selected. While CyberVision understands that eligibility criteria is a variable/subjective indicator which varies from procurement to procurement depending upon the nature of that procurement, there may be instances where the criterion may be made more flexible and easier to enable new entities to provide services. For instance, a digital marketing and design agency may not have many years of experience as an entity, but the individual founders may have considerable experience. In other instances, the nature of projects completed by an individual or firm may be more useful than having a long work history spread over several years.

An innovative, flexible and inclusive approach needs to be taken for services sector recruitment by them in order to allow startups, small businesses, microenterprises and freelancers to apply.

4.1 Procurement of Consultancy Services

Overview

Clause 22 Application of consultancy services rules of KPPRA Rules 2014 states that the following:

“rules shall apply only to consulting services which are of an intellectual and advisory nature and differ from the other types of services directly connected with the procurement of goods and works in which the physical component of the activity is the main function and often involves equipment-intensive assignments.” This is a narrow definition and excludes other areas which are considered out of ambit and classified under Non-Consulting Services.

Recommendations

- It is recommended that Non-Consulting Services be shifted with Consultancy Services instead of clubbing them with Works. For instance, janitorial services or driving services, which are presently classified as Non-Consulting Services can be provided by small businesses, microenterprises and startups. Therefore, they can be shifted under Consultancy Services.
- Two sub-categories can then be created under Chapter IV “Procurement of Services” with two sub-categories: Non-Consulting Services and Consultancy Services with comparative relaxed operation procedures.

4.2 Provision of Short-Term Consultancy

Overview

Under Chapter IV Procurement of Consultancy Services, clause 23 (d), single source procurement or direct selection is possible subject to approval by head of the procuring entity for very small assignments valuing up to Rs. 500,000/- It is being proposed that the ceiling of this is revised to Rs. 2 million. Also, the duration of such small assignments is not given.

Recommendations

- The duration of single source procurement or direct selection can be capped at 6 months.
- It is further recommended that the ceiling is revised from Rs. 500,000 to Rs. 2 million.
- It is further recommended that the limit for a firm be revised up to Rs. 5 million. It is recommended to insert a rule for “Consultants’ Qualifications Selection (CQS) for small assignments valuing not more than 5 million or in time-sensitive situations in which preparing and evaluating competitive proposals is not justified.
- Similarly, it is recommended to allow PE to hire service provider/s in the form of individual consultant or firm to deliver non-consulting services as well such as data entry, janitorial services, telesales/marketing, admin support etc.

4.3 Provision for Service Delivery Contracts (SDC)

Overview

It is a common practice to hire service providers like testing agencies for holding of scrutiny test for facilitation of hiring process, as well as engaging other service providers for security services, janitorial services, driving services etc. At present there is no legal backing for SDC in KPPRA Rules 2014.

Recommendations

- It is recommended that appropriate adjustment be made in KPPRA Rules 2014 allowing PE to hire service provider/s in the form of individual consultant or firm to deliver non-consulting services such as security, janitorial and driving services

4.4 Provision for Subcontracting or Assignment

Overview

At present, though subcontracting clauses are duly defined and permissible in the Standard Bidding Documents for Services subject to the conditions stated therein, a specific rule for subcontracting in KPPRA Rules 2014 is required.

If this was included in the Rules, then it would enable even more meaningful collaborations to happen between new and old organizations which could lead to greater innovation and more enhanced services for government departments. At the same time, new as well as small startups, microenterprises, small businesses firms would be able to work with more established firms and start creating institutional history of working with government departments. In the proposed amendments as well, this has been mentioned as an insertion of a new rule 46A:

“Subcontracting or Assignment is permissible if the bid solicitation documents do not prohibit subcontracting in an open competitive bidding. The subcontracting shall only be permissible with prior express consent of procuring entity. The successful bidder may subcontract part of the contract but only if the bidder to be subcontracted has not been debarred from procurement proceedings or has participated in the procurement of goods, works or services related to that particular procurement proceedings.

The successful bidder shall be responsible towards the procuring entity for the obligations of the subcontractor. The minimum qualification of subcontractor may be taken into account”.

Recommendations

- It is recommended that sub-contracting or assignment be added to KPPRA Rules 2014 as long as the bid solicitation documents do not prohibit subcontracting in an open competitive bidding and the PE provides its consent.
- In this case, the successful bidder may subcontract part of the contract as long as the subcontracted bidder has not been debarred from procurement proceedings or has participated in the procurement of goods, works or services related to that particular procurement proceedings.
- Also, the successful bidder will be responsible to the PE for the subcontractor's performance.

4.5 Provision for Joint Ventures/Consortiums

Overview

JV & consortiums are in practice, but legal cover and clear guidelines are required in KPPRA Rules. In the new proposed amendments as well, this has been mentioned as a new Rule 36A:

“Joint ventures or consortiums is permissible if the bid solicitation documents do not prohibit them. Firms may form joint ventures or consortium with domestic and/or foreign firms to enhance their qualifications and capabilities. A joint venture may be for the long term or for a specific procurement. All the partners in a joint venture shall be jointly and severally liable for the entire contract”.

Recommendations

- It is recommended that a specific rule for joint ventures or consortiums is included in KPPRA Rules
- This would enable small businesses, microenterprises and startups to join forces and submit sound proposals in partnership with one another
- This would allow them to compete against more well-established businesses

4.6 Enhancement of Financial Ceilings

Overview

Clause 22 (d) single source or direct selection mentions Rs. 500,000 for very small assignments.

Recommendations

- Keeping in mind that the KPPRA Rules were made in 2014, financial ceilings need to be revised for procurement of consultancy services.
- It is recommended that this be revised to Rs. 2 million.

4.7 Method of Advertisement

Overview

The threshold for hoisting of procurement opportunities on PE's website as well as KPPRA's website is capped at Rs. 2.5 million at present.

Recommendations

- It is recommended that the single source or direct selection procurement be advertised through the outsourcing platform to ensure that freelancers can apply for the projects.
- Also, in addition to placing these opportunities on official websites, it is recommended that these opportunities are always advertised on the outsourcing platform as well.

4.8 Procurement Planning

Overview

Clause 30 of KPPRA Rules 2014 Procurement planning states: "Each procuring entity shall plan its procurements with due consideration to transparency, economy, efficiency and timeliness, and shall ensure equal opportunities to all prospective bidders in accordance with section 22 of the Act."

Recommendations

- It is recommended that this should be enforced, including the identification of Consultancy Services and Non-Consulting Services both so that they can be advertised on the outsourcing portal in a timely manner.

4.9 E-Procurement

Overview

Clear guidelines are required for e-procurement in KPPRA rules. E-tendering and e-bidding processes are being utilized by some government departments, for instance CNW department, but there is no over-arching e-procurement portal to date. Furthermore, an end-to-end e-procurement system does not exist. In the amendment document as well, it is mentioned:

“After rule 32A, the following new rule 32B shall be inserted, namely:

The procuring entities may carry out procurement process by using electronic means in such a manner to cover any or all aspects of the Procurement Process, including issuing Bid Solicitation Documents, receiving Bids/Proposals, and carrying out other procurement actions till award of contract.

The Authority shall develop standard guidelines and procedures for electronic procurement system”.

Recommendations

- It is recommended that clear guidelines should be presented for e-procurement so that KP government departments can benefit from the ease, efficiency and cost saving that e-procurement offers as well as the following:
 - Reduction in paperwork
 - Easier access to information
 - Greater control by the decision makers
 - Cost efficiency by minimizing manual labour
 - Savings in terms of time factor and standardization of the procurement process across the Government etc.

4.10 Procurements in Urgency Situations

Overview

Clause 34 (1) Response time states that “under no circumstances the response time shall be less than fifteen days for national competitive bidding and thirty days for international competitive bidding from the date of publication of advertisement or notice in the national newspaper.”

Furthermore, clause 10 (d) (Alternate methods for procurement of goods) mentions “urgency” only in the case of procurement of goods. The definition of “urgency” is missing from the Definitions section of KP Rules 2014.

Recommendations

- It is recommended that faster procurement of services be allowed in urgency situations under KP Rules 2014.
- It is recommended that the term “urgency” is defined and included in KP Rules 2014
- It is recommended that the scope of the term “urgency” is broadened to include services.
- This will enable efficient and quick procurement of services in urgency situations.

4.11 Provision for “Procurement Function” in Procuring Entities (PE)

Overview

At present, in several government departments, there may not be specialized units within a procuring entity (PE) comprising procurement officials who are responsible for managing the procurement process and the procurement function may rest with the administration department.

Recommendations

- It is recommended that The Act 2012 make it mandatory for a “Procurement Function” to exist within a PE.

4.12 Contract administration

Overview

At present, KPPRA Rules 2014 do not provide for contract administration. As a result, issues such as performance management, payment approvals etc. cannot be addressed.

Recommendations

- It is recommended that contract administration be included in the law in order to address issues related to performance management, payment approvals, dispute resolution, Force majeure, contract termination, contract closure etc,

EXTRAORDINARY

REGISTERED NO. PIII

GOVERNMENT



GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, THURSDAY, 20TH SEPTEMBER, 2012.

PROVINCIAL ASSEMBLY SECRETARIAT,

KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 20th September, 2012.

No. PA/Khyber Pakhtunkhwa/Bills/2012/6059-The Khyber Pakhtunkhwa Public Procurement Regulatory Authority Bill, 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 3rd September, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 16th September, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

The Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012.

(Khyber Pakhtunkhwa Act No. XI of 2012)

(first published after having received the assent of the Governor of the Khyber

Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa (Extraordinary),

dated the 20th September, 2012)

As amended vide the Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment) Act No.

XXX of 2016

(Amendment) Act No. XII of 2019

(Second Amendment) Act No. XIII of 2019

AN

ACT

*to provide for the legal and regulatory framework
for public procurement.*

WHEREAS it is expedient to provide for the legal and regulatory framework for public procurement, and other matters connected therewith or incidental thereto, for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title, extent and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012.

_____ (2) It extends to the whole of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. Definitions.—(1) In this Act, unless there is anything repugnant in the subject or context,-

(a) “Authority” means the Khyber Pakhtunkhwa Public Procurement Regulatory Authority established under section 4;

(b) “bidder” means a contractor, supplier, vendor or consultant who offers his services for procurement of goods works, or services in response to bid solicitation by a procuring entity;

(c) “best evaluated bid” means,-

(i) in case for procurement of goods and services, the highest ranking fair bid in accordance with the evaluation criteria set forth in the bid solicitation documents;

(ii) in case of procurement of works, the lowest responsive evaluated bid will be the ‘best evaluated bid’;

(d) “bidding” means the formal procurement procedure under which sealed bids are invited, received, examined and evaluated for the purpose of awarding a contract;

(e) “bidding documents” means the data, information and representations submitted by the bidder on the bid solicitation documents advertised and made available by the procuring entity;

(f) “bid solicitation documents” means the documents prepared by the procuring entity on the format of standard bidding documents for solicitation of bids;

(g) “Board” means the Board of Directors of the Authority;

(h) “Chairperson” means the Chairperson of the Board;

(i) “consultant” means a person, a firm, a company or an organization undertaking supply of

services;

- (j) “contract” means a contract as defined in the Contract Act, 1872;
- (k) “goods” means articles and objects of every kind and description including raw materials, intermediate inputs, finished goods, products, equipments, computers, machinery, spare-parts and commodities in solid, liquid or gaseous form, electrical, mechanical as well as incidental services such as installation, transport or vehicles, maintenance and similar obligations related to the supply of goods, if the value of these services does not exceed the value of such goods;
- (l) “Government” means the Government of the Khyber Pakhtunkhwa;
- (m) “Managing Director” means the Managing Director of the Authority;
- (n) “mis-procurement” means public procurement in contravention of any of the provision of this Act or any other law in respect of or relating to public procurement, including any rules, regulations, orders or instructions made in this behalf and for the time being in force;
- (o) “prescribed” means prescribed by rules made under this Act;
- (p) “procurement object” means goods, works or services to be procured by a procuring entity through public procurement process;
- (q) “procuring entity” means-
 - (i) a Department or any Office of Government including a project unit; or
 - (ii) any Board, Commission, Council or other bodies established by or under a provincial law; or
 - (iii) semi-autonomous or autonomous bodies which are owned or controlled by Government;
- (r) “province” means the Khyber Pakhtunkhwa;
- (s) “public procurement” means acquisition, temporary or permanent or on lease, of goods or services, or undertaking of works by contractual means, financed wholly or partly out of Fund by any procuring entity;
 - (s-i) “regulations” mean regulations made under this Act;^{[1] Ins.}

^[1] Ins: Inserted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment), Act No. XXX, 2016 via Notification No. PA/Khyber Pakhtunkhwa/Bills/2016/16900 dated Peshawar, the 15th December, 2016.

- (t) “responsive” means conformity of a bid/technical proposal submitted by the prospective bidders to the statement of requirements in terms of section 24 of this Act;
- (u) “rules” means the rules made under this Act;
- (v) “services” means any object of procurement which does not constitute procurement of works or goods and includes consulting services;
- (w) “standard bidding documents” means the format/forms approved and notified by the Authority for submission of proposals and bids by the bidders in a public procurement process; and
- (x) “works” means any constructional work consisting of erection, assembly, repair, renovation or demolition of a building or structure or part thereof, such as site preparation, excavation, installation of equipment or materials and decoration, finishing and includes allied services such as mapping, satellite photography, seismic investigations and similar activities, if the value of the services does not exceed that of the works themselves.

(2) Words, expressions and terms not specifically defined in this Act and the rules shall have the same meanings as attributed to them in the relevant trade and industry practices.

3. General principles of public procurement.—All public procurement shall be conducted in such a manner as provided in this Act, rules and regulations made under this Act and shall promote the principles of transparency, economy, value for money, accountability and swift grievance handling.

4. Establishment of the Authority.—(1) Soon after the commencement of this Act, Government shall by notification in the official Gazette establish an Authority to be known as Khyber Pakhtunkhwa Public Procurement Regulatory Authority with its headquarters at Peshawar.

(2) The Authority shall as soon as possible establish its own secretariat and may set up its regional offices in such place or places in the Khyber Pakhtunkhwa, as it may deem appropriate.

(3) The Authority shall be a body corporate, having perpetual succession and a common seal, with power to acquire and hold property and to enter into contracts, and may by the said name sue and be sued, and shall exercise all powers necessary for the purposes under this Act.

5. Powers and Functions of the Authority.---The Authority shall perform functions and exercise powers as follows:

- (a) hear and dispose of appeals against the orders of procuring entity;
- (b) formulate standard bidding documents, separately for procurement of Goods, Works and services, for all procuring entities to emulate as the format for bid solicitation documents for submission of proposals and bids by the bidders in a public procurement process;

- (c) shall assist the major procuring entities to engineer/re-engineer their business procedures and design their Procurement Manuals in compliance with this Act;
- (d) ensure that all the procuring entities organize and maintain a system for the publication of or posting on departmental official website of data on Public Procurement opportunities, awards and any other relevant information;
- (e) ensure that all procuring entities organize and manage database and web site which shall warehouse information and publications on public procurement;
- (f) conduct performance review based on pre-determined indicators and benchmarks through third party validation by State Bank of Pakistan certified category ‘A’ chartered accountant firm;
- (g) organize and manage capacity-building of procurement personnel in all the procuring entities in the Province;
- (h) conduct research and take measures to further principles of public procurement enunciated in this Act;
- (i) recommend to the Government, measures necessary to improve the quality of public procurement in the Province;
- (j) recommend to the Government, measures necessary to enhance transparency and ensure accountability in the public procurement process in the Province;
- (k) advise Government on all matters pertaining to public procurement;~~[del]~~^[2]
- (l) lay down codes of ethics and procedures for procurement, inspection and quality of goods, services and works; and^[3]_{Ins:}
- (m) perform such other functions and exercise such powers as may be necessary to further objectives of this Act and perform such other functions as assigned by the Government from time to time^[4]_{Re-num:}

6. Management.—The general directions and administration of the Authority and its affairs shall

^[2] Del: Word “and” deleted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment), Act No. XXX, 2016 via Notification No. PA/Khyber Pakhtunkhwa/Bills/2016/16900 dated Peshawar, the 15th December, 2016.

^[3] Ins: Inserted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment), Act No. XXX, 2016 via Notification No. PA/Khyber Pakhtunkhwa/Bills/2016/16900 dated Peshawar, the 15th December, 2016.

^[4] Re-num: Renumbered vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment), Act No. XXX, 2016 via Notification No. PA/Khyber Pakhtunkhwa/Bills/2016/16900 dated Peshawar, the 15th December, 2016.

vest in the Board, which shall exercise all powers and do all acts, which may be exercised or done by the Authority, in accordance with the provisions of this Act.

7. Board of Directors.—(1) Government shall constitute a Board of Directors for the management and administration of the Authority consisting of,-

- | | |
|--|--------------|
| (a) Secretary to the Government,
Finance Department; | Chairperson. |
| (b) Secretary to the Government,
Planning & Development Department
or his nominee not below the rank of an Additional
Secretary; | Member. |
| (c) Secretary to the Government,
[Communication and Works] ^[5] _{Sub.} Department or his
nominee not below the rank of an Additional Secretary; | Member. |
| (d) Secretary to the Government,
Irrigation Department
or his nominee not below the rank of an Additional
Secretary; | Member. |
| (e) Secretary to the Government of Public
Health Engineering Department or
his nominee not below the rank of an Additional Secretary; | Member |
| (f) Secretary to the Government,
Health Department or his nominee
not below the rank of an Additional Secretary; | Member. |
| (f-i) [Secretary to Government,
Member.
Law, Parliamentary Affairs
and Human Rights Department or his nominee, | |

^[5] Sub: Substituted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment) Act No. XII, 2019 via Notification No. PA/Khyber Pakhtunkhwa/Bills-17/2019/10491, dated Peshawar, the 12th March, 2019.

not below the rank of an Additional Secretary;]^[6]Ins:

- (g) three persons from the private sector Members.
i.e. from trade and industry,
academia, civil society and professional associates;
- (h) Managing Director of the Authority; Member/Secretary.
- (2) Government shall notify the terms and conditions for appointment of non-official members of the Board.
- (3) The non-official members shall be appointed by Government for a period of three years.
- (4) Six members shall constitute the quorum for convening meeting of the Board.
- (5) The meeting of the Board shall be presided over by the Chairperson and in his absence by one of the ex-officio Members to be nominated by the Chairperson in this behalf.
- (6) All decisions in the meeting shall be taken by majority of votes. Each member, including the Chairman, shall have one vote, but in the event of tie of votes, the Chairman shall have a second or casting vote.

8. Managing Director.—(1) Government shall appoint the Managing Director of the Authority for a period of three years on such terms and conditions as it may determine and may extend his appointment for a second term:

Provided that the entire period of appointment shall not exceed six years.

- 2) The Managing Director shall be a senior civil servant of BS-20 or a reputed professional with fifteen years post-qualification experience, preferably in public procurement. However, no such person shall be appointed as Managing Director who has been:
- (a) convicted by a court of law; or
- (b) removed from any service on a charge of misconduct.
- 3) The Managing Director shall be the Chief Executive and the Principal Accounting Officer of the Authority.
- 4) In the performance of his functions, the Managing Director shall work within the framework of

^[6]Ins: Inserted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment) Act No. XII, 2019 via Notification No. PA/Khyber Pakhtunkhwa/Bills-17/2019/10491, dated Peshawar, the 12th March, 2019.

the general policy and guidelines laid down by the Board.

8-A. Delegation of powers.— The Authority may, subject to such conditions and limitations as it may deem appropriate, delegate any of its functions or powers, as the case may be, to the Managing Director^[7]_{Ins.}

9. Establishment of the Authority Fund.—(1) There shall be a Fund to be known as Khyber Pakhtunkhwa Public Procurement Regulatory Authority Fund, hereinafter referred to as Authority Fund, which shall vest in the Authority and shall be utilized by the Authority to meet charges and expenses in connection with the affairs of the Authority under this Act including salaries and other remunerations of the non-official members and employees of the Board.

(2) The Authority Fund shall consist of all the money received by the Authority.

10. Custody and investment of the Authority Fund.—(1) The Board may keep the Authority Fund in any Scheduled Bank, as may be approved by it.

(2) Nothing in sub-section (1) shall be deemed to preclude the Board from investing any such moneys which are not required for immediate expenditure in any of the securities described in section 20 of the Trust Act, 1882 (Act No. II of 1882), or placing them in fixed deposit with a Bank approved by the Board or in such other manner as may be approved by it.

11. Maintenance of accounts.—The Board shall maintain complete and accurate books of accounts of its actual expenses and receipts in such form as the Government, in consultation with the Local Audit Department determined.

12. Audit.— The Authority shall cause to carry out the audit of its accounts by Auditor General of Pakistan provided that provision shall be made for an internal audit of the finances of the Authority.

13. Appointment of officers, advisors etc.---The Authority may, from time to time and subject to resources, appoint such officers, servants, advisers, consultants, referees and experts as it may consider necessary for performance of its functions. The Authority shall notify the procedure for appointments and fixation of terms and conditions after approval of the Board of Directors.

14. Responsibility of procuring entity.---(1) Each Procuring Entity shall be responsible for carrying out public procurement subject to the provisions of this Act, and the rules, the administrative instructions and the standard bidding documents made there-under:

^[7] Ins: Inserted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment), Act No. XXX, 2016 via Notification No. PA/Khyber Pakhtunkhwa/Bills/2016/16900 dated Peshawar, the 15th December, 2016.

Provided that-

- (i) Government on a specific request of the procuring entity or in public interest may exempt a procuring entity from some or all of the provisions of this Act for which reasons shall be recorded in writing. Government may seek comments of the Authority, if so required;
 - (ii) for District Governments, the procuring entity may route a justifiable case for exemption to the Government by the District Coordination Officer, through Secretary Local Government Department;
 - (iii) Government may exempt the procurement of an object or a class of objects, in national/public interest, from some or all provisions of this Act, for which reasons shall be recorded in writing; and
- (2) Government shall notify the exemption and publish the same for public consumption in the print^[8]Sub: media.
 - (3) [The procuring entity may, wholly or partly, conduct the bidding process through electronic means.].^[9]_[Add:]

14A. Transparency, accountability and fairness.— All procurement shall be conducted in a manner which promotes transparency, accountability and fairness.

14B. Competition.— Except as otherwise provided for in this Act and the rules, all procurement shall be conducted so as to maximize competition and to achieve value for money:

Provided that the exception shall be made only for acquisition of services for reasons to be recorded in writing by the procuring entity.

15. Confidentiality.—(1) A procuring entity shall not, except when required to do so by an order of a Court, disclose any information if the disclosure would:

- (a) cause a breach of this law or any other law; or
- (b) impede law enforcement; or
- (c) prejudice legitimate commercial interests of the parties; or
- (d) inhibit fair competition; or
- (e) not be in public interest.

^[8]Sub: Substituted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment), Act No. XXX, 2016 via Notification No. PA/Khyber Pakhtunkhwa/Bills/2016/16900 dated Peshawar, the 15th December, 2016.

^[9] Add: Added vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment) Act No. XIII, 2019 via Notification No. PA/Khyber Pakhtunkhwa/Bills-18/2019/10498, dated Peshawar, the 12th March, 2019.

(2) A procuring entity shall not disclose any information relating to the contents of offers, pre-qualification submissions and actual content of bids, proposals or quotations other than in a summary form setting out the evaluation and comparison of tenders, proposals or quotations received before award of the contract. The format/forms for announcement of bids evaluation and determination of the best evaluated bid shall be prescribed.

16. Ethics.—(1) All procurements shall be carried out in accordance with such Code of Ethics as may be prescribed.

(2) Public officials as well as experts, engaged to deliver specific services in public procurement proceedings including evaluation of bids, shall be required to sign a Code of Ethical Conduct as may be prescribed.

(3) All vendor of goods, works or services shall be required to sign a declaration of compliance with such Code of Conduct as may be prescribed.

17. International Obligations.—Notwithstanding anything contained in this Act, the international obligations of Government arising out of bilateral or multilateral Agreements including Treaties, financing agreements, or agreements by Government shall continue to remain and be valid, binding and operative.

18. Preference and reservation.—(1) If an agreement in terms of section 17 provides for preference to national vendors, the procuring entity shall ensure that such preference is unambiguously stated in the standard bidding documents and announcements for the procurement including advertisement and terms of reference and tender documents.

(2) Each procuring entity shall permit prospective bidders to participate in procurement proceedings without regard to nationality, except where a procuring entity decides to limit such participation to national providers or participation of any nationality is forbidden by any law or by any instruction/policy of the Federal Government or other Provincial Government.

(3) If participation is restricted on the basis of nationality, the procuring entity shall record in the procurement proceedings a statement of grounds and circumstances relied upon.

19. Public Accessibility.—This Act, the rules made thereunder, guidelines, forms, bidding documents and/or decisions of Government or procuring entity relating to procurement shall be placed on a web-site of the Authority in addition to the website of the procuring entity or the Government, as the case may be, and which will also provide copies of these documents to the public at a fee not exceeding the cost of printing/reproduction of the documents.

20. Records.—(1) The procuring entity shall:

(a) maintain detailed records of all procurement proceedings in the manner

as prescribed; and

(b) preserve, maintain and safeguard all relevant documents issued and received as shall be set out in the rules.

(2) The records of the procurement process of the procuring entity shall be open to internal and external audit or to procurement post-review in the prescribed manner or for scrutiny or inspection by Government or in accordance with any law.

21. Communication.—(1) All communications between a procuring entity and the bidder or vendor of procurement object shall be in writing.

(2) Forms of communication as well as the name of the focal person shall be specified in solicitation documents.

22. Procurement planning.—(1) Each procuring entity shall plan its procurements with due consideration to transparency, economy, efficiency and timelines, and shall ensure equal opportunities to all prospective bidders.

(2) All procurement requirements must be documented and approved by the procuring entity prior to commencement of procurement proceedings.

(3) In specified circumstances, a procuring entity may proceed with the procurement proceedings except for award of contract when the availability of funding in the full amount over the required period remains to be confirmed/approved by the competent authority:

Provided that the project has been approved or has received anticipatory approval from the competent authority/forum or is otherwise within the competence of the procuring entity and budget provision exists.

23. Bid Solicitation documents.—(1) A procuring entity shall adopt standard bidding documents designed under this Act and insert/add specifications into the standard bidding documents for each procurement.

(2) Bid solicitation documents shall specify in detail the terms and conditions, including a statement of general conditions of contract, which shall apply to the resultant contract.

(3) The general conditions of contract shall not be modified.

(4) Each procuring entity shall solicit bids based on performance or functional specifications and not on restrictive or proprietary specifications of a particular brand.

(5) A procuring entity may introduce special conditions of contract to elaborate and qualify the general conditions of contract, where applicable, furnishing detailed justification and reasons

thereof, in the bid solicitation documents.

- (6) Bid solicitation documents shall invariably include an unambiguous statement giving an accurate and complete description of the procurement objects to pursue the principles of public procurement enunciated in section 3 of this Act.
- (7) Statement of requirements shall be in the form of technical specifications, terms of reference, scope of work, briefs or its equivalent as appropriate.
- (8) Bid solicitation documents shall be made available to the bidders from the date of their issuance to the closing date on submission of required fee by the prospective bidder whether in person or, if so requested, through mail.
- (9) At any time prior to the deadline for submission of bids, the procuring entity may, on its own initiative or in response to a request for clarification by a bidder, modify the bid solicitation documents by issuing an addendum or corrigendum.

(10) If the procuring entity considers necessary, it may extend the closing date, after recording reasons in writing, to enable bidders to take the addendum or corrigendum, as the case may be, fully into account in preparing their bids.

(11) No change in the substance of bids, including changes in price, shall be sought, offered or permitted after the date and time of bid closing, except as otherwise provided for in the rules.

24. Submission of bids.—(1) A procuring entity shall require the bidders to submit sealed written bids or in such other manner, as may be prescribed.

- (2) The method for submission of bids shall be determined by the type, complexity and evaluation method of the procurement in accordance with the rules.
- (3) All announcements pertaining to public procurement shall specify the last date for submission of bids as well as the public bid opening which shall be the same.
- (4) The bidding period shall be reasonable to allow bidders to prepare and submit their bids and shall not be reduced.
- (5) A bidder may withdraw his bid at any time before the deadline for submission of bids, unless otherwise specified.
- (6) To avoid delays, the procuring entity may hold a pre-bid conference with the prospective bidders if the procurement is of complex nature and high value.

25. Minimum qualification of bidders.—A procuring entity shall require all bidders to meet minimum qualification criteria to participate in public procurement to affirm/ensure that the bidder,-

- (a) has the legal capacity to enter into the contract;
- (b) has the prescribed technical proficiency, equipments/plant and/ or relevant certified experience;
- (c) is neither insolvent nor bankrupt;
- (d) is not in the process of winding up nor his/her properties are under the control of receiver nor his/her business activities have been suspended nor legal proceedings for any of the foregoing are imminent or have been initiated against him/her; and
- (e) has fulfilled all obligations under law for the time being in force.

26. Enlistment and Pre-Registration.---For the enlistment and pre-registration, the following conditions should be adopted, namely:

- (a) enlistment and pre-registration shall be carried in a manner as may be prescribed;
- (b) [provincial enlistment and pre-registration shall be undertaken by a committee, which shall be chaired, steered, represented and coordinated by Communication and Works Department, with representation from Irrigation Department, Public Health Engineering Department, Local Government, Elections and Rural Development Department and any other Members, as co-opted.”.]^{[10]Sub:}

27. Best practices and industry standards.—Procuring entities shall at all times use industry standards defined and codified by internationally recognized trade associations and professional bodies in the appropriate fields in international bidding where available and local bidding where laid down.

28. Procurement process and evaluation.—For the procurement process and evaluation,-

- (a) the procurement system would allow a single stage single envelope, a single stage, two envelopes, a two stage single envelope and two stage two envelopes procedures depending on

[¹⁰]Sub: substituted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment) Act No. XII, 2019 via Notification No. PA/Khyber Pakhtunkhwa/Bills-17/2019/10491, dated Peshawar, the 12th March, 2019.

the nature of the procurement or as laid down in procurement rules made under this Act;

- (b) the rules shall prescribe the threshold and method for single source single quotation, request for quotations and open competitive procurement;
- (c) the methodology of evaluation shall be determined by the type, value and complexity of the procurement as may be prescribed by the Authority;
- (d) all bid solicitation documents shall fully and comprehensively detail the evaluation methodology and criteria relevant to the particular procurement;
- (e) contract shall be awarded to the bidder whose bid is responsive and is determined as the best evaluated bid ascertained on the basis of methodology and criteria mentioned in clause (d) above and in the definition; and
- (f) no evaluation criteria other than those stipulated in the solicitation documents shall be taken into account.

29. Disqualification and debarment of bidders.— (1) The procuring entity shall disqualify a bidder if it finds at any time that the information submitted concerning qualifications of the bidder was false, or materially inaccurate or incomplete.

(2) A procuring entity may debar a bidder from taking any further part in a procurement proceeding or in future procurement proceedings if the bidder-

- (a) forms part of a cartel/ring with a view to discourage fair competition in the bidding process; or
- (b) has failed to complete his earlier contract, within a period of three years of the initiation of procurement proceeding, on ground that his approved bid was or has become unprofitable or would result in his suffering of loss; or
- (c) offers or attempts to offer inducement of any sort; such baring actions will be duly publicized and communicated to the Authority.

30. Rejection of bids.---A Procuring Entity may reject any or all bids communicating the reasons for rejection in writing to the Authority at any time prior to the award of a contract.

31. Award of Contract.—The procuring entity shall award contract on the following conditions, namely:

- (a) the contract shall be awarded on the basis of the best evaluated bid;

- (b) the best evaluated bid shall be determined on the basis of total conformity to the evaluation criteria which may include quality or cost or both;
- (c) the procedure to determine the best evaluated bid under different methods of procurement and consequent award of contract shall be prescribed by the rules made under this Act;
- (d) the award of contract shall be made as per timeframe prescribed in the rules made under this Act;
- (e) a procuring entity shall complete evaluation of bids and award of contract within the initial period of bid validity to avoid the necessity of extensions;
- (f) an extension of bid validity, where inevitable, shall be requested only in exceptional circumstances as may be prescribed and shall always be sought in writing from all bidders before the expiration date; and
- (g) all contracts shall be confirmed through a written agreement signed by the successful bidder and the procuring entity, except as otherwise provided for in the rules.

32. Changes in bidders circumstances.—Any changes in the circumstances of the bidder during the procurement proceedings that could materially affect the capacity to execute the contract shall be immediately brought to the attention of the procuring entity by the bidder, other bidders or any other stakeholder.

33. Methods of procurement.—(1) The procuring entities shall resort to open competitive bidding as the preferred method of procurement.

(2) The selection of the procurement procedure shall be made in accordance with the rules, and shall be approved by the concerned procuring entity prior to commencement of any procurement proceedings:

Provided that the procuring entities may exceptionally use other methods, including negotiations, in the following eventualities in accordance with the rules to cater for:

- (a) procurements of small value through petty purchase or through request for quotations; and
- (b) procurements through direct contracting in an emergency caused by nature or governments, for urgent requirements caused by unforeseeable events, single repeat order not exceeding fifteen percent of the original procurement, for considerations of

intellectual property, if price is fixed by a Government in the country or procurement from another procuring entity/public sector organization within Pakistan.

34. Procurement Committees.---Procuring entities may constitute procuring Committees for procurement of goods, works and services.

35. Grievance Redressal Mechanism.—(1) Any bidder aggrieved by any act of the procuring entity may follow the two tier grievance redressal mechanism in the following manner:

(a) file a complaint in writing to the head of procuring entity in accordance with prescribed procedure; and

(b) file an appeal to the Authority against the decision of the procuring entity within fifteen days in accordance with the prescribed procedure.

(2) The decision of the Authority on appeal shall be final.

(3) [Unless and until the two tier grievance redressal mechanism, provided in sub-section (1), is exhausted, no Court or any other authority shall take cognizance of the same and grant any injunction.”.]^[11] _[Add:]

35-A. Power to make regulations.—The Authority may make regulations, not inconsistent to this Act or rules, for carrying out the purposes of this Act^[12] _{Ins:}

35-B. Indemnity.—No suit, prosecution, or other legal proceedings shall lie against the Authority, the Board, the Chairperson Managing Director, officer, servants, advisers or consultants of the Authority in respect of anything done or intended to be done in good faith under this Act or rules and regulations^[13] _{Ins:}

35-C. Bar of Jurisdiction.— No Civil Court shall have jurisdiction to entertain any proceedings, grant any injunction or make any order in relation to any matter, order and proceedings, carried out by procuring entity and authority against anything done, intended or purported to be done, in good faith, under this Act.”.]^[14] _{Ins:}

[11] Add: Added vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment) Act No. XII, 2019 via Notification No. PA/Khyber Pakhtunkhwa/Bills-17/2019/10491, dated Peshawar, the 12th March, 2019.

[12] Ins: Inserted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment), Act No. XXX, 2016 via Notification No. PA/Khyber Pakhtunkhwa/Bills/2016/16900 dated Peshawar, the 15th December, 2016.

[13] Ins: Inserted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment), Act No. XXX, 2016 via Notification No. PA/Khyber Pakhtunkhwa/Bills/2016/16900 dated Peshawar, the 15th December, 2016.

[14] Ins: Inserted vide The Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment) Act No. XII, 2019 via Notification No. PA/Khyber Pakhtunkhwa/Bills-17/2019/10491, dated Peshawar, the 12th March, 2019.

36. Power to make rules.—Government may make rules for carrying out the purposes of this Act.

37. Repeal.---(1) The Khyber Pakhtunkhwa Public Procurement of Goods, Works, Services and Consulting Services Ordinance, 2002 (Khyber Pakhtunkhwa Ord. No. XVIII of 2002) is hereby repealed.

(2) Notwithstanding the repeal of Khyber Pakhtunkhwa Procurement of Goods, Works, Services and Consulting services Ordinance, 2002 (Ord. No. XVIII of 2002), any public procurement initiated under the repealed law, shall, if not inconsistent with the provisions of this Act shall be executed and dealt with in accordance with the provisions of repealed law.

38. Removal of Difficulties.—If any difficulty arises in giving effect to any of the provisions of this Act, Government may, by notification in the official Gazette, make such provision as may appear to it necessary for the purpose of removing the difficulty.

BY ORDER OF MR. SPEAKER

**PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA**

(AMANULLAH)

Secretary

Provincial Assembly of Khyber Pakhtunkhwa

GOVERNMENT OF THE KHYBER PAKHTUNKHWA

FINANCE DEPARTMENT

NOTIFICATION

Peshawar, Dated the 3rd February 2014

No. SO (FR)/FD/9-7/2010/Vol-II.--In exercise of the powers conferred by section 36 of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act No.XI of 2012), the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

The Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014.

CHAPTER 1

GENERAL PROVISIONS

1. **Short title and commencement.**-- (1) These rules may be called the Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014.
 - (2) These shall come into force at once.

2. **Definitions.**-- (1) In these rules, unless there is anything repugnant in the subject or context,-
 - (a) "Act" means the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012;
 - (b) "bid" means a technical proposal or a financial proposal or a technical and financial proposal submitted as a result of request for quotations, tender notice, request for proposal as the case may be;
 - (c) "bid security/ [deleted]¹⁵ guarantee" means a written guarantee from a third party guarantor usually a bank [deleted]¹⁶ submitted to a client by a contractor or bidder with a bid;
 - (d) [Deleted]¹⁷
 - (e) "contractor" means a person, a firm, a company or an organization undertaking supply of goods, works or non consulting services;
 - (f) "emergency" shall refer to situation that poses an immediate risk of loss, or has caused loss, or has high probability of escalating to cause immediate danger to health, life, property or environment as covered under the National Disaster Management Act, 2010 (Act No. XXIV of 2010) and shall include natural calamities, disasters, accidents, war and breakdown of operational equipment, plant, machinery or engineering infrastructures, which may give

¹⁵ The word and slash "surety/" deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

¹⁶ Words "or an insurance company" deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2011/Vol-II dated 11.08.2016.

¹⁷ Clause (d) "borrower" means procuring entity;" deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

- rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to health, life, property or the environment;
- (g) “grievance redressal mechanism” means the regulations/guidelines providing for grievance redressal process;
 - (h) “non -consulting services” means the provision of independent expert advice of a quality at least equal to the applicable professional standards in relation to acquisition of goods, services other than consulting services and works;
 - (i) “PEC” means Pakistan Engineering Council;
 - (j) “professional engineering work” means providing professional advice and opinions, the making of measurements and layouts, the preparation of reports, computations, designs, drawings, plans, specifications and construction, inspection, and supervision of engineering works, in respect of:
 - (i) railways, aerodromes, bridges, tunnels and roads;
 - (ii) dams, canals, rivers, drains, harbors, lighthouses;
 - (iii) works of an electrical, mechanical, hydraulic, communication, aeronautical, power engineering, geological or mining character;
 - (iv) water works, sewers, filtration, purification and incinerator works;
 - (v) residential and non-residential buildings including foundations framework and electrical and mechanical systems thereof; and
 - (vi) structures accessory to engineering works and intended to house them;
 - (k) “Province” means the Province of the Khyber Pakhtunkhwa;
 - (l) “Public Fund” means--
 - (i) Provincial Consolidated Fund;
 - (ii) foreign assistance;
 - (iii) all moneys standing in the Public Account; and
 - (iv) funds of enterprises wholly or partly owned or managed or controlled by Government;
 - (m) “repeat order” means a fresh contract or order given directly to the same contractor or consultant without going into the normal procurement process, in accordance with the specified conditions and limits contained in these rules;
 - (n) “request for proposal” means bidding document for soliciting technical and financial proposals for procurement of services;
 - (o) “supplier” means a person, a firm, a company or an organization undertaking supply of goods, services or works;
 - (p) “terms of reference” means defining and elaborating on the objectives and intended scope of services; [deleted]¹⁸
- [“(p-i) “unsolicited proposal” means an unsolicited proposal as defined in the Khyber Pakhtunkhwa Public Private Partnership Act, 2014 (Khyber Pakhtunkhwa Act No. XX of 2014); and”].¹⁹
- (q) “value for money” means best returns for each rupee spent in terms of quality, timeliness, reliability, after sales service, up-grade ability, price, source, and the combination of whole-life cost and quality to meet the procuring entity’s requirements.

¹⁸ After semi-colon, the word “and” deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/ 2017/17449-Vol-I dated 08.02.2018.

¹⁹ New clause “(p-i)” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/ 2017/17449-Vol-I dated 08.02.2018.

(2) Words, expressions and terms not specifically defined in these rules shall have the same meanings as attributed to them in relevant trade and industry practices.

3. **Applicability of these rules.**— (1) These rules shall be applicable to all public procurements.

(2) Under following circumstances deviation from the requirements of advertisement and response time under these rules is permissible:

(a) in cases of emergency as provided in the National Disaster Management Act, 2010 (Act No. XXIV of 2010), subject to the condition,—

(i) that all such procurements along with its emergent nature has to be recorded by the Procuring Officer and approved by the technical head of the procuring entity under intimation to the Principal Accounting Officer, Secretary at Provincial or Deputy Commissioner at District level;

(ii) that these have to be immediately intimated to the Accountant General Office or District Accounts Office, as the case may be;

(iii) that quantities in all such procurements shall be limited to the assessed requirement of emergency only; and

(iv) that these shall be used only for procurements upto maximum for three months, which may be extended for such a period that Government may deem fit, depending on the nature of emergency;

(b) the procurement of sensitive nature and related to National Security:

Provided that the direct sourcing of all such procurements shall be duly recorded; and

(c) the direct sourcing to a government organization for provision of works, goods or services under a cost plus or fixed contract provided that the Public Sector Organization shall not involve a private sector enterprise as a partner or in the form of a joint venture or a sub-contractor. The government organizations shall be totally government owned and controlled or semi-autonomous and autonomous agencies under the administrative control of Federal Government or Provincial Government.

4. **Language.**—All documentation related to public procurements of entities shall be in English or Urdu.

5. **Code of ethics and integrity pact.**--- Procurement exceeding the prescribed limit shall be subject to an integrity pact, as specified by regulations/guidelines determined by Authority in consultation with procuring entities, between the procuring entity and the suppliers or contractors.

CHAPTER II**METHODS OF PROCUREMENT OF GOODS**

6. [**“Open competitive bidding as principal method of procurement”**];²⁰ -- (1) Save as otherwise provided hereinafter and subject to the provisions of rule 10, the procuring entity shall use open competitive bidding as the principal method of procurement for the procurement of goods over the value of Rs. 100,000 (rupees one hundred thousand).

(2) The following procedures shall be permissible for open [competitive bidding]²¹, namely:

a) *single stage, one envelope procedure*.-- this method should be used where cost is the only determining factor. Each bid shall comprise one single envelope containing financial proposal or offer and required information in accordance with the bid solicitation documents. This shall be the standard method of procurement of goods for simple and routine nature and where no technical innovation is involved;

b) *single stage, two envelopes procedure*.-- this method shall be used where bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation. Bid shall comprise a single package containing separate envelopes. Each envelope shall contain separately the financial proposal and technical proposal; [and]²²

[“(c) two stage two envelope bidding procedure.-The method shall be used for procurement where alternative technical proposals are possible, such as certain type of machinery or equipment or manufacturing plant.”].²³

(3) In case of procurement of complex or specialized goods either of the two methods may be adopted,--

(a) pre-qualification of prospective bidders and invitation of bids from the pre-qualified bidders; and

(b) through single envelope two stage method post-qualification-

(i) in the first stage, each bid shall comprise of a single package containing envelope marked as technical proposal;

(ii) the technical proposals will be evaluated in accordance with the evaluation criteria set forth in the bid solicitation document. A list of qualified and unqualified bidders will be formulated at the end of first stage;

²⁰ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

²¹ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

²² Added, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

²³ New clause “(c)” added, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

- (iii) following approval of the results of first stage, financial proposals will be solicited from qualified bidders in the second stage. The bidders will be required to submit financial proposal in a single envelope or package clearly marked as financial proposal in bold and legible letters to avoid confusion; and
- (iv) the lowest offer from the qualified bidder shall be accepted for award of the contract and will be the best evaluated bid.

[“6A. **Single bid in goods**.--- The single bid in goods may be considered if it meets the evaluation criteria expressed in advertisement or bid solicitation documents and is not in conflict with the Act, these rules, regulations or policy of Government, for the time being in force. The single bid shall be in conformity with best evaluated bid. The procuring entity shall make a decision with due diligence and in light of section 3 of the Act.”]²⁴

7. **[Deleted]**²⁵

8. **Pre-qualification of suppliers**.--(1) A procuring entity, in the first stage may pre-qualify bidders only in the following cases:

- (a) where total worth of contract exceeds Rs. 10 million; and
- (b) in cases of contracts for large and complex goods and related services, in which there are high costs of preparing detailed bids.

(2) The procuring entity may pre-qualify bidders by soliciting various details in accordance with sub-rule (1) of rule 8, and rule 36 of these rules.

(3) Pre-qualification of bidders shall be based entirely upon the capability, competence and resources of the bidders relevant to performance in the particular assignment, taking into account the following--

- (a) legal status along with proof of registration with one of the Federal or Provincial Registration Acts;
- (b) proof of being a taxpayer;
- (c) organizational profile, relevant experience, past performance, list of clients and references;
- (d) relevant experience and past performance;
- (e) existing capabilities with respect to human resource, personnel, computing and engineering equipment, machinery and plant, as may be the case;

²⁴ New Rule “6A” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

²⁵ Rule 7 deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

- (f) financial position for the last three years including bank statements and audited reports by an external auditor;
 - (g) proof of possessing appropriate managerial capability; and
 - (h) any other factor that a procuring entity may deem relevant, depending on the nature and complexity of the contract but not inconsistent with these rules.
- (4) [“The bid solicitation documents shall be issued to the qualified bidders.”.]²⁶
- (5) For further process sub-rule (2) of rule 6 shall be followed.
9. **Open [“competitive bidding”]²⁷ post-qualification.**—(1) If bidding is not limited to pre-qualified firms, the procuring entity shall engage itself in post qualifying the bidders, in case of contracts of complex nature and valuing Rs. 15 million or above.
- (2) Procuring entity shall specify the requirement of post-qualification in the solicitation documents. Post-qualification may be undertaken in accordance with the provision of these rules, regardless of the bidders being pre-qualified.
- (3) This shall be done prior to recommending contract award; the procurement committee shall determine whether the bidder whose bid has been determined to offer the best evaluated bid has the capability and resources to effectively carry out the contract offered in the bid.
- (4) In case the procurement committee is not satisfied with qualification based on the evaluation criteria resulting is not post-qualifying the best evaluated bid, it shall proceed to make a similar determination for the bidder offering the next best evaluated bid and shall go on with all the qualified and responsive bidders in accordance with their ranking in being best evaluated, till the criteria is satisfied or till all such bids are rejected.
10. **Alternate methods for procurement of goods.**— A procurement entity may use the following alternative methods for procurement of goods, namely:
- (a) procurement of goods upto Rs. 50,000/- may be undertaken by obtaining a single quotation through direct sourcing.
 - (b) petty purchases between Rs. 50,000/- upto Rs. 100,000/- shall be procured through alternate method only if the following conditions are met, namely:
 - (i) minimum of three quotations have been obtained:

Provided that if despite soliciting, less than three quotations are received it would be acceptable;
 - (ii) request for quotation is sent to prospective bidders, simultaneously, with full contents and same information, which is duly acknowledged to be received;
 - (iii) the closing time, date and address for submitting quotations has been clearly defined and adhered to;

²⁶ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

²⁷ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

- (iv) the object of the procurement has standard specifications;
 - (v) in case, amount pertaining to applicable tax is not added in the quotation, comparison of price is made after adding amount of applicable tax; and
 - (vi) during comparison, each item should be compared to the corresponding respective specification and bid evaluated to the corresponding total cost of the bid;
- (c) a procurement entity shall only engage in alternate method if the following conditions exist, namely:
- (i) repeat orders within a period of six months:

Provided that it does not exceed fifteen percent of the original contract value;
 - (ii) in case of procurement through government organizations, in accordance with provisions of rule-3(2)(c) of these rules;
 - (iii) where the procurement concerns the acquisition of spare parts or supplementary services from original manufacturer or supplier or sole distributor:

Provided that the same are not available from alternative sources;
 - (iv) where the same goods are not available from alternative sources or only one contractor, manufacturer or supplier exists for the required procurement;
 - (v) where a change of contractor or supplier would ensue the procuring entity to acquire material having different technical specifications or characteristics and would result in incompatibility or disproportionate technical difficulties in operation and maintenance, this shall be done with proper justification and recording of such reasons, provided that the contract or contracts do not exceed three years in duration;
 - (vi) where the price of goods is fixed by Government;
 - (vii) where the motor vehicles or machinery is purchased from local original manufacturers or their authorized agents at manufacturer's price including transportation charges and other applicable taxes; and
 - (viii) in case of emergency as defined in these rules and procurement specified under sub-rule 3(2)(a) and 3(2)(b):

Provided that the procurement entity shall specify appropriate forums vested with necessary authority to declare an emergency;

- (d) a procuring entity may engage in negotiated tendering with one or more suppliers or contractors without prior publication of a procurement advertisement. This procedure shall be followed when--
- (i) the supplies involved are manufactured purely for the purpose of supporting a specific piece of research or an experiment, a study or a particular development;
 - (ii) for technical or artistic reasons, or for reasons connected with protection of exclusive rights or intellectual property, the supplies may be manufactured or delivered only by a particular supplier; and
 - [“(iii)”]²⁸ for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the time limits laid down for open and limited bidding methods cannot be met. The circumstances invoked to justify extreme urgency must not be attributable to the procuring entity:

Provided that any procuring entity desirous of using negotiated tendering as a method of procurement shall record its reasons and justifications in writing for resorting to negotiated tendering and shall place the same on record.

11. Method of advertisement.---[“(1) The procuring entity shall engage in open competitive bidding, if the cost of the object to be procured is more than the financial limit, which is applicable under rule 10. Purchases up to Rs. 2.5 million shall be posted on the procuring entity’s website and Authority’s website, respectively. These procurement opportunities may also be advertised in print media, if deemed necessary by the procuring entity.

(2) For all purchases, other than those being covered in rules 3, 10 and sub-rule (1) of rule 11 of these rules, shall be advertised in print media, appearing in at least one national English and one Urdu daily newspaper with nationwide circulation along with advertising the same on the procuring entity’s website and Authority’s website, respectively.”.]²⁹

(3) A procuring entity utilizing electronic media shall ensure that the information posted on the website is complete for the purposes for which it has been posted, and such information shall remain available on that website until the closing date for the submission of bids.

12. Bid security.---(1) The procuring entity may require the bidders to furnish bid security of up to two per cent in case of procurement of goods, if required.

(2) In cases, where procurement is of complex nature, bid security up to 5 percent can be applied.

(3) Bid security shall be kept sealed in the financial proposal. In case of two stage two envelopes the bidder shall, in addition, keep an affidavit in the technical proposal stating that a bid security amounting to 2,3,4 or 5 percent, as may be the case without indicating the figure in the letter,

²⁸ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

²⁹ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

has been placed in the financial proposal or bid. Otherwise the technical proposal will be considered non-responsive and will be returned to the bidder after being examined by the procurement committee.

13. [**Goods warranty.**--Where possible, the procuring entity shall ask for a warranty from the supplier or contractor, as the case may be, for replacement or repair of the goods procured falling in the warranty period and in line with independently verifiable industry practices for that particular object of procurement.”.]³⁰

³⁰ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

CHAPTER III**PROCUREMENT OF WORKS AND
NON-CONSULTING SERVICES.****14. [“Open competitive bidding as principal method of procurement.”];³¹**

(1) Save as otherwise provided hereinafter and subject to the provisions of rule [“18”]³², the procuring entity shall use open competitive bidding as the principal method of procurement for the procurement of [“works”]³³ over the value of Rs. 100,000/ rupees one hundred thousand.

(2) the following procedures shall be adopted for open competitive bidding:

- (a) *single stage* – one envelope bidding,--the bid shall comprise of one envelope containing financial bid. All bids received shall be opened and evaluated in the manner prescribed in the bidding document. This shall be the default method of open competitive bidding;
- (b) *single stage* – two envelope bidding,--
 - (i) this method shall apply to large and complex contracts;
 - (ii) bidders for this method shall be pre-qualified;
 - (iii) each bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the technical proposal and the financial proposal;
 - (iv) the envelopes shall be marked as technical proposal and financial proposal in bold and legible letters to avoid confusion;
 - (v) the envelope marked as technical proposal shall contain:
 - (a) the experience and past performance in the execution of similar contracts;
 - (b) the capabilities with respect to personnel and construction equipments;
 - (c) the financial status and capacity; and
 - (d) any other information asked for by the procuring entity in the notice inviting tenders;

³¹ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

³² Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

³³ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

- (vi) the second envelope marked as financial proposal shall contain the price quoted by the bidders and be retained in the custody of the procuring entity without being opened;
 - (vii) the procuring entity shall evaluate the technical proposal on the basis of criteria specified in the ["bid solicitation"]³⁴ documents without reference to the price and reject any proposal which does not conform to the specified requirements. During the technical evaluation, no amendment in the technical proposal shall be permitted. A list of technically qualified bidders shall be finalized in this manner;
 - (viii) after the evaluation and approval of the technical proposals the procuring entity, shall at a time within the bid validity period, publicly open the financial proposals of the technically accepted bids only. The financial proposals found technically non-responsive shall be returned un-opened to the respective bidders; and
 - (ix) the bid found to be the lowest evaluated bid shall be accepted;
- (c) *two stage - two envelope bidding*,---this method shall be used for turnkey or large or complex contracts and ensures that all technical proposals conform to the same acceptable technical standards required by the procuring entity.

First stage:

- (i) the bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;
- (ii) the envelopes shall be marked as financial proposal and technical proposal in bold and legible letters to avoid confusion;
- (iii) initially, only the envelope marked technical proposal shall be opened;
- (iv) the envelope marked as financial proposal shall be retained in the custody of the procuring entity without being opened;
- (v) the technical proposal shall be discussed with the bidders with reference to the procuring entity's technical requirements;
- (vi) those bidders willing to meet the requirements of the procuring entity shall be allowed to revise their technical proposals following these discussions; and
- (vii) bidders not willing to conform their technical proposals to the revised requirements of the procuring entity shall be allowed

³⁴ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

to withdraw their respective bids without forfeiture of their bid security.

second stage:

- (i) after agreement between the procuring entity and the bidders on the technical requirements, bidders who are willing to conform to the revised technical specifications and whose bids have not already been rejected shall submit a revised technical proposal and supplementary financial proposal, according to the technical requirement;
- (ii) the revised technical proposal along with the original financial proposal and supplementary financial proposal shall be opened at a date, time and venue announced in advance by the procuring entity:

Provided that in setting the date for the submission of the revised technical proposal and supplementary price proposal, a procuring entity shall allow sufficient time to the bidders to incorporate the agreed upon changes in the technical proposal and to prepare the required supplementary financial proposal; and

- (iii) the procuring entity shall evaluate the whole proposal in accordance with the evaluation criteria and the bid found to be the lowest evaluated bid shall be accepted.

[“**14A. Single bid in works and non-consulting services.**---The single bid in works and non-consulting services may be considered if it meets the evaluation criteria expressed in advertisement or bid solicitation documents and is not in conflict with the Act, these rules, regulations or policy of Government, for the time being in force. The single bid shall be in conformity with best evaluated bid. The procuring entity shall make a decision with due diligence and in the light of section 3 of the Act.”.]³⁵

15. [Deleted]³⁶

16. **Pre-qualification of contractors.**--(1) A procuring entity, in the first stage shall pre-qualify bidders for specific contracts in cases where [deleted]³⁷ a work irrespective of its worth is considered as complex.

³⁵ New Rule “14A” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

³⁶ Deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

³⁷ Deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

(2) The procuring entity shall pre-qualify bidders by soliciting various details including but not limited to the following providing pass/fail thresholds, in accordance with the provisions of the Act and rules 17(1) and 34 of these rules.

- (a) legal status along with proof of registration with PEC and enlistment with the concerned provincial Government PE;
- (b) proof of valid or renewed relevant registration;
- (c) proof of being a taxpayer;
- (d) organizational profile, relevant experience, past performance, list of clients and references;
- (e) existing capabilities with respect to technical personnel, computing and engineering equipment, machinery and plant as may be the case;
- (f) financial position for the last three years including bank statements and audited reports by an external auditor;
- (g) proof of possessing appropriate managerial capability; and
- (h) any other factor that a procuring entity may deem relevant, and is duly included in the bid solicitation documents, depending on the nature and complexity of the contract but not inconsistent with the Act and these rules.

(3) Bidding shall be limited to pre-qualified firms.

(4) Qualified bidders shall be issued the ["bid solicitation documents"]³⁸.

(5) For further process sub-rule (2) of rule ["14"]³⁹ shall be followed.

17. Open tendering post-qualification of contractors.--- (1) [deleted]⁴⁰ the procuring entity may choose to call for bids with the condition of post-qualification provided in the bidding documents.

(2) The post-qualification criteria provided in the bidding documents shall be based on the evaluation of technical and financial worth i.e. works executed, indicating value of works, list of technical and other staff, plant or equipment along with the make and financial capacity.

(3) Bidding documents shall be made available to all interested bidders.

(4) The qualification of the lowest evaluated responsive bidders shall be checked to ensure whether or not the bidder is qualified to perform the works.

³⁸ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

³⁹ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁴⁰ Deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

(5) If the lowest evaluated responsive bidder is not found to be qualified on all the post-qualification criteria provided in the bidding documents, its bid shall be rejected.

(6) Credentials of the next lowest evaluated responsive bidders shall then be checked against all of the post-qualification criteria provided in the bidding documents, and the contract shall be awarded to the lowest evaluated responsive qualified bidder.

18. Alternate methods for procurement of works, and non-consulting services.--A procurement entity may use the following alternative methods for procurement, namely:

- (a) petty purchases,-- procurement of upto Rs. 50,000/- may be undertaken by obtaining a single quotation through direct sourcing;
- (b) request for quotations,-- procurement from Rs. 50,000/- upto Rs. 100,000/- shall be procured through alternate method only if the following conditions are met, namely:
 - (i) minimum of three quotations have been obtained, provided that if despite soliciting, less than three quotations are received it would be acceptable;
 - (ii) request for quotation is sent to prospective bidders, simultaneously, with full contents and same information, which is duly acknowledged to be received;
 - (iii) the closing time, date and address for submitting quotations has been clearly defined and adhered to;
 - (iv) the object of the procurement has standard specifications;
 - (v) in case, amount pertaining to applicable tax is not added in the quotation, comparison of price is made after adding amount of applicable tax; and
 - (vi) during comparison, each item should be compared to the corresponding respective specification and bid evaluated to the corresponding total cost of the bid;
- (c) Direct contracting,-- a procurement agency shall only engage in alternate method if the following conditions exist, namely:
 - (i) where civil works are to be contracted and are a natural extension of an earlier or ongoing job and it can be ascertained that the engagement of the same contractor will be more economical and will ensure compatibility of results in terms of quality of works subject to limitation of repeat or variation order;
 - (ii) in case of procurement through government organizations, in accordance with provisions of rule-3(2)(c) of these rules;
 - (iii) where a change of contractor or supplier would oblige the procuring entity to acquire material having different technical specifications or characteristics and would result in incompatibility or disproportionate technical difficulties in operation and maintenance, this shall be done with proper justification and recording of such reasons, provided that the contract or contracts do not exceed three years in duration;
 - (iv) in case of emergency as defined in these rules and procurement specified under sub-rule 3(2)(a) and 3(2)(b), provided that the procurement entity shall specify appropriate forum vested with necessary authority to declare an emergency;
 - (v) subject to the conditions of contract, a procuring entity may, [“issue”]⁴¹ a variation order to a contractor to include works which were outside the original

⁴¹ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

scope of works to ensure interests of Government and for reasons of economy, compatibility and efficiency provided that:

- (a) the original contract is still in force;
- (b) the procuring entity has satisfied itself for technical reasons that the placing of the variation order is cost effective;
- (c) the value of variation order is not more than fifteen percent of the original contract; and
- (d) there may be more than one variation orders as long as the total value of all the variation orders remains within 15 percent of the original contract.

19. Method of advertisement.-- ["(1) The procuring entity shall engage in open competitive bidding if the cost of the object to be procured is more than the financial limit which is applicable under rule 18 of these rules. Procurement from Rs. 100,000/- to Rs. 2.5 million shall be posted on the procuring entity's website and Authority's website. These procurement opportunities may also be advertised in print media, if deemed necessary by the procuring entity.

(2) For all procurement, other than those being covered by rules 3, 18 and sub-rule (1) of rule 19 of these rules, shall be advertised in print media, appearing in at least one national English and one Urdu daily newspaper with nationwide circulation along with advertising the same on the procuring entity's website and Authority's website, respectively.".]⁴²

(3) A procuring entity utilizing electronic media shall ensure that the information posted on the website is complete for the purposes for which it has been posted, and such information shall remain available on that website until the closing date for the submission of bids.

20. Bid security.--(1) The procuring entity ["shall"]⁴³ require the bidders to furnish bid security of two per cent in case of procurement of works, [deleted]⁴⁴

(2) The bid security shall be kept sealed in the financial proposal. In case of single stage two envelopes, the bidder shall in addition, place an affidavit in the technical proposal stating that a bid security amounting to 2 percent without indicating the figure in the letter, has been placed in the financial proposal or bid. Otherwise the technical proposal will be considered non-responsive and will be returned to the bidder after being examined by the procurement committee.

(3) The bid security will be returned to unsuccessful bidders after signing of the contract with the successful bidder.

⁴² Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁴³ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁴⁴ Deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

(4) The bid security of the successful bidder will be retained in case no performance guarantee is required, however such a condition shall be mentioned in the bidding document. [In case performance guarantee is required, the bid security of two percent (2%), as specified in sub-rule (1), of the successful bidder, shall not be returned. The successful bidder shall be required to deposit eight (8%), of the cost of the contract in the shape of an irrevocable bank guarantee.]⁴⁵

21. **Performance guarantee.--** The procuring entity may ask for a performance guarantee from the contractor, which shall not exceed 10 percent of the bid value, as would be specified in the standard bid solicitation documents or standard bidding document.

⁴⁵ Substituted by the Finance Department Notification No. SO (FR)/FD/9-7/2011/Vol-II dated 11.08.2016.

CHAPTER IV**PROCUREMENT OF CONSULTANCY SERVICES**

22. **Application of consultancy services rules.**--These rules shall apply only to consulting services which are of an intellectual and advisory nature and differ from the other types of services directly connected with the procurement of goods and works in which the physical component of the activity is the main function and often involves equipment-intensive assignments.
23. **Systems for selection of consultants.**--The selection system shall be determined by the procuring entity prior to the commencement of the process of selection of prospective consultants. Procuring entity may utilize one of the following systems for selection of consultants, namely:
- (a) **quality based selection (QBS),**-- this system will be used for highly specialized and complex assignments, where quality is the only factor taken into consideration;
 - (b) **quality and cost based selection (QCBS),**---this system will be used where high quality is the prime consideration while cost is a secondary consideration;
 - (c) **least cost,**--- this system will only be used for assignments of standard or routine nature, where well established practices and standards exist;
 - (d) **single source or direct selection,**---subject to approval by head of the procuring entity, a procuring entity may engage in single-source procurement-
 - (i) the goods, construction or services are available only from a particular contractor or supplier, or a particular contractor or supplier has exclusive rights in respect of the goods, construction or services, and no reasonable alternative or substitutes exists; or
 - (ii) the procuring entity having procured goods, equipment, technology or services from a contractor or supplier, determines that additional supplies must be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternative to the goods or services in question; or
 - (iii) in cases of emergency;
 - (iv) for very small assignments valuing upto Rs. 500,000/-; and

- (v) where only one consultant is qualified or has experience of exceptional worth; and
- (e) **fixed budget**-- this system shall be used only when the assignment is simple, can be precisely defined and when the budget is fixed. The request for proposals shall indicate the available budget. Proposals that exceed the indicated budget shall be rejected. The ranking shall be based only on evaluation of technical proposals of the qualified bidders.

[“23A. Single bid in consultancy services.--The single bid in consultancy services may be considered if it meets the evaluation criteria expressed in advertisement or bid solicitation documents and is not in conflict with the Act, these rules, regulations or policy of the Government for the time being in force. The single bid shall be in conformity with best evaluated bid. The procuring entity shall make a decision with due diligence and in the light of section 3 of the Act.”.]⁴⁶

24. Criteria for eligibility of consultants.--The procuring entity shall not hire a consultant for an assignment in which there is possibility of conflict of interest. If a consultant has been engaged by the procuring entity to provide goods or works for a project, it shall be disqualified from providing consulting services for the same project. Similarly, consultant should not be hired for any assignment which by its nature, may be in conflict with another assignment of the consultant.

25. Expression of interest (EOI).-- [“(1) A procuring entity may call for expression of interest which shall be advertised, giving to the bidders at least fifteen (15) days for national competition and thirty (30) days for international competition to submit their interest to provide consultancy services.”.]⁴⁷

- (2) The expression of interest shall contain at least the following information:
 - (a) the name and address of procuring entity;
 - (b) an appropriate description of the assignment providing scope of the intellectual and professional services required;
 - (c) deadline and place of the submission of expression of interest; and
 - (d) criteria for short-listing where required.

26. Criteria for short-listing of consultants.--[“(1) Whenever short-listing is deemed necessary, the procuring entity shall pre-determine criteria for short-listing. Except for single source, there shall be minimum three (03) and maximum six (06) consultants, with highest ranking fair bids as defined under clause (c) of sub-section (1) of section 2 of the Act, in the short-list. However, if less than three candidates apply, their proposals may be considered on merit.”; and]

⁴⁶ New Rule “23A” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁴⁷ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

(2) The procuring entity while short-listing consultants may take the following factors into consideration, namely:

- (a) qualification;
- (b) general experience; or
- (c) specific experience, particularly of the last five years; or
- (d) any other factor that a procuring entity may deem relevant, not inconsistent with these rules.

(3) All applicants shall be informed whether or not they have been short-listed.

[“(4) The procuring entity may decide to include enlistment as a short-listing criteria in contracts less than rupees one hundred (100) million.”.]⁴⁸

27. **Request for proposals (RFP).** ---(1) [“when a procuring entity calls for expression of interest it”]⁴⁹ shall make available to all the short-listed consultants, together with the request for proposals, all information on the equal opportunity basis.

[“(1A) A procuring entity may call for request for proposal which shall be advertised, giving to the bidders at least fifteen (15) days for national competition and thirty (30) days for international competition to submit their proposals to provide consultancy services.”; and]⁵⁰

[“(2) A procuring entity may call for request for proposal without calling expression of interest for seeking proposals from consultants whether shortlisted or enlisted or prequalified or not, which shall include the following, namely:

- (a) **letter of invitation (LOI)**,---the letter of invitation shall mention the name and address of the procuring entity and shall state the intention of the procuring entity to enter into a contract for provision of consulting services;
- (b) **instruction to consultants**,---the instructions to consultants shall contain all necessary information that would help them prepare responsive proposals and shall bring as much transparency as possible to the selection system;
- (c) **terms of reference (TOR)**,---the terms of reference shall unambiguously define the objectives, goals and scope of the assignment besides conditions of contract. Terms of reference shall list the services and surveys necessary to carry out the assignment and expected outputs. It shall also include the evaluation criteria;
- (d) **evaluation criteria**,---except as otherwise provided, the evaluation of proposals shall be carried out giving due consideration to quality and cost;
- (e) **type of contract**,---the procuring entity, depending on the circumstances, may use one of the following types of contract, namely:

⁴⁸ New sub-rule “(4)” added, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁴⁹ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁵⁰ New sub-rule “(1A)” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

- (i) lump sum contract will be used mainly for assignments in which the content, duration of the services and the required output are unambiguously defined;
- (ii) time based contract will be used when it is difficult to define the scope and the length of services;
- (iii) hourly or daily rates will be used for small projects, especially when the assignment is for less than a month; and
- (iv) any other, based on combination of the above and including out of pocket expenses, where required; and
- (f) **special provisions**,--the procuring entity may specify any other requirement related to the assignment or contract etc, where required.”.]⁵¹

(3) The procuring entity will invite the prospective consultants to submit their technical and financial proposals in separately sealed envelopes. The procuring entity shall give deadline for submission of proposals. Consultants shall be given adequate time for preparing their proposals which shall not be less than [two weeks]⁵².

28. Selection process of individual consultants.---(1) Individual consultants may not be required to submit proposals, and shall be selected based on their qualifications for the assignment.

(2) Individual consultants shall be selected by comparing the qualifications of at least three consultants among those who have expressed interest in the assignment or have been approached directly by the procuring agency. Individual consultants considered for the comparison of qualifications shall meet the minimum relevant qualifications, and the one selected to be employed by the procuring agency shall be the best qualified and shall be fully capable of carrying out the assignment.

(3) An individual consultant may be selected on a single-source basis (with due justification) in exceptional cases; such as the following--

- (a) for a task that is a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively;
 - (b) in an emergency situation resulting from a natural disaster; and
 - (c) when the individual is the only consultant qualified for the assignment.
- (4) For key assignments, interviews may be set up, and invited candidates should be paid travel and subsistence, as needed. Capability of the candidates should be evaluated.

29. Professional liability of consultants.---(1) The consultant selected and awarded a contract shall be liable for consequence of errors or omissions on its part. The extent of liability of the consultant should be incorporated in the contract and in no case should it be less than remunerations excluding the out of pocket expenses, nor should the liability exceed twice the remunerations.

⁵¹ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁵² Substituted by KPPRA Notification No. KPPRA/M&E/Estt:/1-3/2015-16 dated Dec 15, 2015.

(2) The procuring entity may demand insurance on part of the consultant to cover its liability as stated above, and necessary costs shall be borne by the consultant which shall be re-imbursed by the procuring entity as out of pocket expenses by the consultant.

(3) The consultant shall be held liable for all losses or damages and short comings in deliverance etc, suffered by the procuring entity as a result of mis-conduct or inadequate services in performing the consulting services.

CHAPTER V

MISCELLANEOUS PROVISIONS

30. **Procurement planning.**---Each procuring entity shall plan its procurements with due consideration to transparency, economy, efficiency and timeliness, and shall ensure equal opportunities to all prospective bidders in accordance with section 22 of the Act.
31. [**Limitation on splitting or regrouping of proposed procurement.**---A procuring entity shall announce all proposed annual procurements on the Authority’s website and on their own website before the end of 31st July each year and shall proceed accordingly without any splitting or regrouping of the procurements so planned, unless the procuring entity is satisfied that-
- (a) block acquisition of goods, services or works shall unnecessarily hold up available resources;
 - (b) technical reasons indicate that packaging shall improve manageability and quality; and
 - (c) the impact of weather, geographical spread on certain procurement, particularly in case of works contract, shall affect its execution with regard to quality and delivery schedule.”.]⁵³

[**31A. Framework contract.**---(1) A procuring entity may procure goods, services or works through framework contract in order to ensure uniformity in the procurement.

(2) The procuring entity shall adopt any of the methods of procurement mentioned in these rules for purposes of entering into a framework contract.”.]⁵⁴

32. **Procurement committees.**-- (1) Each procuring entity shall constitute committees, in accordance with delegation of financial powers, separately for procurement of goods, works and services.

(2) The committees shall have a representative each from the accounts or finance or planning sections of the procuring entity apart from others.

(3) A technical member shall be inducted from the relevant line department of Government or hired in all procurements of works or in exceptional cases, provided that procurement is technical and complex in nature.

[**32A. Enlistment.**---(1) Each Department of Government shall constitute a sub-committee, consisting of five members with the chairperson, not below the rank of BPS-19, for scrutinizing

⁵³ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁵⁴ New Rule “31A” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

credentials, submitted to it by the prospective bidders, before referring to the Provincial Enlistment and Pre-registration Committee for enlistment or renewal, as the case may be.

(2) After scrutinizing, the sub-committee shall recommend to the Provincial Enlistment and Pre-registration Committee that the prospective bidder may be registered, renewed or rejected, as the case may be, and the Provincial Enlistment and Pre-registration Committee shall give its final decision of enlistment, registration and rejection, within five working days:

Provided that the sub-committee, while recommending the rejection of a prospective bidder to the Provincial Enlistment and Pre-registration Committee shall also record reasons for such rejection.

(3) Subject to the approval of Government, the sub-committee shall determine the applicable fee for registration or renewal, from time to time. However, the period of such enlistment and pre-registrations shall be decided by the Provincial Enlistment and Pre-registration Committee.

(4) The criteria for enlistment of prospective bidders shall be based on evaluation of technical and financial capabilities of the bidders, as may be determined by the sub-committee, so constituted.

(5) The criteria and list of prospective bidders, so enlisted, shall be posted on the web sites of the Authority, Department of Government and Provincial Enlistment and Pre-registration Committee, as well as on a notice board placed in the respective procuring entity at an accessible site for public viewing.

(6) The process of enlistment shall be open throughout the year and any prospective bidder shall be allowed to apply for enlistment, with sub-committee without any hindrance.

(7) Bidding shall be limited to enlisted bidders only.

(8) Enlistment shall not be deemed as pre-qualification or post-qualification.”.]⁵⁵

33. **Bid solicitation documents.**—[“(1) A procuring entity shall apply the standard bidding documents while preparing bid solicitation documents as are applicable and in accordance with the provision of the Act, these rules and regulations, for the time being in force.”; and]⁵⁶

(2) In case of procurement of works, solicitation documents shall contain technical specifications, drawings and designs, bill of quantities and estimated costs whatever applicable, evaluation criteria, expected commencement of contract and time period for completion, bid validity, securities demanded, payment schedule, general and special conditions of contract [deleted].⁵⁷

(3) In case of procurement of goods and services, including consulting services, the standard bidding document shall include scope of work and terms of reference, the evaluation criteria, the extent of bid validity, quantity, quality and specifications; qualification and experience of

⁵⁵ New Rule “32A” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁵⁶ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁵⁷ Deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

consultants, securities, approach and methodology, work plan and delivery schedule, pre-shipment inspection where applicable, schedule of payments and general and special conditions of the contract.

(4) Apart from the above, any other document or information or detail that the procuring entity may deem necessary, shall be included in the solicitation documents, unambiguously.

(5) Solicitation documents shall be made available to the bidders from the date of their issuance to the closing date on submission of required fee by the prospective bidder whether in person or, if so requested through an authorized request in writing. In case the request is made through courier, it shall accompany a bank draft in favor of the procuring entity including the cost of return delivery.

(6) In case where the procuring entity deem necessary may, keep a time period ending earlier than the closing date of tender or bid, for obtaining bid solicitation documents, provided that it is not less than the minimum response time provided in rule 34.

(7) In case of modification of solicitation documents by the procuring entity in accordance with section 23(9) of the Act, it shall do so by issuing an addendum or corrigendum and intimate the bidders publicly or individually, in case it has issued the solicitation documents, 5 days before the closing date. In case, the changes are substantial, the time for submission may be extended proportionately, by issuing timely intimation to all bidders.

34. Response time.--(1) The procuring entity may decide the response time for receipt of bids or proposals including proposals for pre-qualification from the date of publication of an advertisement or notice, keeping in view the contract's complexity, and urgency. However, under no circumstances the response time shall be less than fifteen days for national competitive bidding and thirty days for international competitive bidding from the date of publication of advertisement [“on Authority’s website or notice in the national newspaper whichever is later, as the case may be.”]⁵⁸

(2) The response time shall be calculated from the date of first publication of the advertisement in a newspaper or posting on the [“Authority’s web site, whichever is later, as the case may be.”]⁵⁹

(3) In situations where publication of such advertisements or notices has occurred in both electronic and print media, the response time shall be calculated from the day of its first publication in the newspapers [“whichever is later”]⁶⁰.

35. **Bid validity.**--(1) Bidders shall be required to submit bids valid for a period specified in the bid documents which shall be sufficient to enable a procuring entity to complete the evaluation and comparison of bids and obtain all necessary approval so that a contract can be awarded within that period.

(2) A procuring entity shall complete evaluation of bids and award of contract within the initial period of bid validity. An extension of bid validity, if justified by exceptional circumstances,

⁵⁸ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁵⁹ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁶⁰ Added, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

shall be required in writing from all bidders before the expiry date. Bidders consenting to extend their bid validity period shall also correspondingly extend the validity of their bid security.

(3) A bidder not agreeing to extend its bid validity period may do so without having his bid security, forfeited and in this case its bid will no longer be considered in the evaluation proceedings.

(4) The bid security shall be forfeited if a bidder withdraws his bid, within the validity period thereof or, in the case of a successful bidder, who repudiates the contract or fails to furnish performance security.

36. Pre-qualification process.--(1) The procuring entity engaging in pre-qualification shall announce, in the pre-qualification documents, all information required for pre-qualification including instructions for preparation and submission of the pre-qualification documents, evaluation criteria, list of documentary evidence required of contractors or consultants to demonstrate their respective qualifications and any other information that the procuring entity deems necessary for pre-qualification.

(2) The procuring entity shall provide a set of pre-qualification documents to any contractor or consultant, on request and subject to payment of document fee if applicable, which shall not exceed cost of printing and providing the documents.

(3) The procuring entity shall promptly notify each contractor or consultant submitting an application to pre-qualify whether or not it has been pre-qualified and shall make available to any person directly involved in the pre-qualification process, upon request, the names of all contractors or consultants who have been pre-qualified. Only contractors or consultants who have been pre-qualified shall be entitled to participate.

(4) The procuring entity shall communicate on request, to those contractors or consultants who have not been pre-qualified the reasons for not pre-qualifying them.

37. Submission of bids and bid opening.--(1) Bids shall be invited through a procuring officer of the procurement entity.

(2) A procuring entity shall require bidders to submit sealed written bids or in such other manner as may be prescribed in the solicitation documents. [“The procuring entity shall also specify the place for submission of such bids.”]⁶¹

(3) The procuring entity shall issue the bidder with a receipt showing the date and time when the bid was received.

(4) No bids or tenders received after the prescribed time and date in the solicitation documents or in accordance with subsequent corrigendum, shall be entertained.

(5) The method for submission of bids shall be determined by the type, complexity and evaluation method of the procurement in accordance with these rules.

⁶¹ Added, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

(6) All announcements pertaining to public procurement shall specify the last date for submission of bids as well as the public bid opening which shall be the same.

(7) The bids, technical or financial as the case may be, shall be opened at the prescribed time provided in the solicitation documents in the presence of the procurement committee and the bidders who choose to be present.

(8) The name of the bidder, bid modifications, discounts or withdrawals, presence of bid security or affidavit as the case may be and the total amount of each bid and any alternatives, if so permitted, shall be read out aloud and recorded, and a copy of the record shall be made available to any bidder on request.

(9) No bidder shall be allowed to withdraw his bid till award of the contract or till bid is valid, whichever is earlier.

(10) A procuring entity may ask bidder for clarification of the bid to assist in the evaluation. To avoid delays, the procuring entity may hold a pre-bid conference with the prospective bidders at least five working days before the last day for submission of bids if the procurement is of complex nature and high value.

[“37A. Registration with Khyber Pakhtunkhwa Revenue Authority.---All bidders are required to be registered with the Khyber Pakhtunkhwa Revenue Authority, established under the Khyber Pakhtunkhwa Finance Act, 2013 (Khyber Pakhtunkhwa Act No. XXI of 2013), for works, consulting and non-consulting services as listed in Schedule-II of the Act *ibid*.

37B. Unsolicited proposal.---(1) In case of unsolicited proposal received for any engineering, procurement and construction project, the procuring entity shall technically and financially evaluate the proposal to ascertain its viability and after such process if the proposal is found viable, the procuring entity, with the approval of Government,-

- (a) shall advertise the proposal for open competition without disclosing the name of the initiator of unsolicited proposal;
- (b) shall conduct prequalification process;
- (c) shall exempt the initiator of the unsolicited proposal from the prequalification;
- (d) may award the contract to the initiator of the proposal, if no other bidder in response to the advertisement submits bid;
- (e) shall give first right of refusal to the initiator, if he does not emerge as the lowest bidder, in case of bidding competition; and
- (f) shall award five percent additional weightage to the initiator of the proposal from the combined score of technical and financial evaluation.

(2) Approval for the unsolicited proposal granted by Government, shall be published in the

print media prior to the award of contract.”]⁶²

38. Confidentiality.--The procuring entity shall keep all information regarding the bid evaluation confidential until the time of the announcement of the evaluation report in accordance with the requirements of rule 45 of these rules.

39. Bid evaluation.— (1) All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents.

(2) For the purpose of comparison of bids quoted in different currencies, price shall be converted into a single currency specified in the bidding documents. The rate of exchange shall be the selling rate prevailing seven working days before the date of opening of the bids specified in the bidding documents, as notified by the state bank of Pakistan.

(3) A bid once opened in accordance with the prescribed procedure shall be subject to only those rules, regulations and policies that are in force at the time of issuance of notice for invitation of bids.

40. Discriminatory and difficult conditions.---Save as otherwise provided, no procuring entity shall introduce any condition, which discriminates between bidders or that is considered to be met with difficulty. In ascertaining the discriminatory or difficult nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related.

41. [“International competitive bidding”]⁶³.--- When, in the absence of domestic capacity, effective competition cannot be obtained unless special efforts are made to attract international competition, international competition may be solicited in accordance with the provisions of the Act complemented with the following provisions:

- (a) the tender documents shall be in English language;
- (b) the invitation to tender shall be in English language and shall be placed in a newspaper of sufficient circulation to attract foreign competition and may also be placed on international web pages famous for international bidding advertisement. In addition, a procuring entity may transmit such invitations to their embassies and trade representatives of potential supplier countries;
- (c) the time allowed for submission of tenders shall be sufficient for the invitation to reach bids, depending on the complexity and nature of procurement and for enabling them to prepare and submit bids but in no case less than thirty days;
- (d) technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade;
- (e) bidders shall be permitted to express their bids, as well as any bid and performance security documents to be presented by them in their respective home currencies or in a currency widely used in international trade and stated in the solicitation documents;
- (f) general and special conditions of contract shall be of a kind generally used in international trade; and

⁶² New Rules “37A & 37B” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

⁶³ Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

- (g) standard bidding documents (SBDs) for goods, works and services shall be used for international competitive bidding (ICB) as well.

42. **Post bid negotiation.**---Procuring entity may negotiate with the highest ranked bidder regarding methodology, work plan, staffing and special conditions of the contract. In case of consulting services the procuring agency shall not permit substitution of key staff, unless both parties agree that undue delay in selection process makes such substitution unavoidable. Similarly, negotiations shall not seek changes in the rates quoted by the bidder. In case of failure of negotiations, the procuring agency may invite the second ranked bidder as per the evaluation report.

43. **Disqualification of suppliers, contractors and consultants.**---The procuring entity shall disqualify a supplier or contractor or consultant if it finds, at any time, that the information submitted by him concerning his qualification as supplier or contractor was false and materially inaccurate or incomplete. However, the bidder may have right to appeal against the decision in accordance with section 35 of the Act and grievances redressal mechanism framed under the Act.

44. **Blacklisting of suppliers, contractors and consultants.**---(1) The procuring entity shall specify a mechanism and manner to permanently or temporarily bar, from participating in their respective procurement proceedings, suppliers contractors and consultants who either consistently fail to provide satisfactory performances or are found to be indulging in corrupt or fraudulent practices or abandon the work prematurely resulting in loss to Government . Such barring action shall be duly publicized and communicated to the Authority, provided that any contractor or consultant who is to be blacklisted shall be accorded adequate opportunity of being heard in person.

(2) The bidder will have a right to complain to the administrative Secretary of the procuring entity or to file an appeal to the Authority in accordance with section 35 of the Act and regulations or guidelines to be framed under it.

[**Explanation.**---“Corrupt and fraudulent practices” means either one or any combination of the practices given below:

- (i) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (ii) “collusive practice” means any arrangement between two or more parties to the procurement process or contract execution, designed to achieve with or without the knowledge of the procuring entity to establish prices at artificial, non-competitive levels for any wrongful gain; impair or harm, directly or indirectly, any party or the property of the party to influence the actions of a party to achieve a wrongful gain or to cause a wrongful loss to another party;
- (iii) “corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the acts of another party for wrongful gain; and

- (iv) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (v) “obstructive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit rights provided for under these rules.”⁶⁴

45. **Announcement of evaluation reports.**---Procuring entities shall announce the results of technical bid evaluation in the form of a report before opening of the financial bids, to all bidders. The procuring entity shall also announce the final results of a bid evaluation giving justification for acceptance or rejection of bids at least ten days prior to the award of a contract and place the same on its and Authority website.

46. **Approval of contract award.**--(1) The procurement committee shall submit the bid evaluation report with its recommendations for award of contract, to the approving authority in accordance with the delegation of powers under the financial rules and the power of re-appropriation rules 2001, in an expeditious manner, so that the award can be notified before expiry of the bid validity period, without having to seek extension, in conformity with the provisions of section 31 of the Act and these rules.

(2) All contract awards shall be made public through publication on Authority website.

47. **Rejection of bids.**---(1) The procuring entity may reject all bids or proposals at any time prior to the acceptance of a bid or proposal. The procuring entity shall upon request communicate to any contractor or consultant who submitted a bid or proposal, the grounds for rejection of all bids or proposals.

(2) The procuring entity shall incur no liability, solely by virtue of its invoking sub-rule (1) towards contractors or consultants who have submitted bids or proposals.

⁶⁴ Explanation inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

- (2) Notice of the rejection of all bids or proposals shall be given promptly to all contractors or consultants that submitted bids or proposals.

48. **Re-bidding.**---(1) If the procuring entity has rejected all bids under rule 47 it may call for a re-bidding.

(2) The procuring entity before invitation for re-bidding shall assess the reasons for rejection and may revise specifications, evaluation criteria or any other condition for bidders as it may deem necessary.

49. **Payments.**---All procuring agencies shall make prompt payments to contractors and consultants against their invoices or running bills within the time given in the conditions of the contract.

[**49A. Community participation in procurement.**---Government may, in order to achieve certain specific social objects, call for the participation of the local community or philanthropic organizations to-

- (a) perform civil works and the delivery of non-consulting services;
- (b) increase the utilization of local know-how, goods, and materials; and
- (c) employ labor-intensive and other appropriate technologies, the procurement procedures, specifications, and contract packaging shall be suitably adapted to reflect these considerations; provided that these are acceptable to the Authority.”.]⁶⁵

50. **Entry into force of the procurement contract.**--- A procurement contract shall come into force-

- (a) where no formal signing of a contract is required, from the date the notice of the acceptance of the bid or purchase order has been given to the bidder whose bid has been accepted. Such notice of acceptance or purchase order shall be issued within 15 days thereof; or
- (b) where the procuring entity requires signing of a written contract, from the date on which the signatures of both the procuring entity and the successful bidder are affixed to the written contract. Such affixing of signatures shall take place within 15 days after the letter of acceptance or award has been issued:

Provided that where the coming into force of a contract is contingent upon fulfillment of a certain condition or conditions, the contract shall take effect from the date whereon such fulfillment takes place.

51. **Closing of contract.**---(1) Except for defect liability or maintenance by the contractor or consultant, as specified in the conditions of contract, performance of the contract shall be deemed close on the issue of over all delivery certificate or taking over certificate which shall

⁶⁵ New Rule “49A” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

be issued within thirty days of final taking over of goods, or receiving the deliverables or completion of works enabling the contractor or consultant to submit final bill.

(2) In case of defect liability or maintenance period, defect liability certificate shall be issued within thirty days of the expiry of the said period enabling the contractor or consultant to submit the final bill. Except for unsettled claims, the bill shall be paid within the time given in the conditions of contract, which shall not exceed sixty days to close the contract.

(3) Relevant provision for closing of contract shall be a part of the bid solicitation document.

52. Record of procurement proceedings.--(1) All procuring entities shall maintain a record of their respective procurement proceedings along with all associated documentation.

(2) Such maintenance of record shall be subject to the regulations framed in this regard from time to time.

53. Public access and transparency.--As soon as a contract has been awarded, the procuring entity shall make all documents related to the evaluation of the bid and award of public contract:

Provided that where the disclosure of any information related to the award of a contract is of proprietary nature or where the procuring entity is convinced that such disclosure shall be against the public interest, it can withhold only such information from public disclosure subject to the prior approval of the administrative department.

54. Mis-procurement.--Any breach of these rules shall account to mis-procurement and the person responsible for such breach shall be liable to be proceeded under the relevant law.

55. Repeal.-- The Khyber Pakhtunkhwa Procurement of Goods, Works and Services Rules, 2003 is hereby repealed.

SECRETARY TO

GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

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