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**SINDH PUBLIC PROCUREMENT
RULES, 2009**

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NOTIFICATION

Notification No: (I)/2009.- In exercise of the powers conferred by section 27 of the Sindh Public Procurement Act, 2009 (_____), the Sindh Government is pleased to make the following rules:-

1. Short title and commencement.

- (1) These rules may be called the Sindh Public Procurement Rules, 2009.
- (2) They shall come into force at once.

Part I - GENERAL PROVISIONS

2. Definitions.

- (1) In these rules, unless there is anything repugnant in the subject or context,-
 - (a) **“The Act”** means Sindh Public Procurement Regulatory Authority Act, 2009;
 - (b) **“Authority”** as defined in the Act.
 - (c) **“Government”** as defined in the Act.
 - (d) **“Public Procurement”** as defined in the Act.
 - (e) **“Procurement Proceedings”** mean all procedures relating to public procurement, starting from solicitation of bids up to award of contract;
 - (f) **“Competent authority”** means an authority specified in the regulations issued by the Authority or in case not specified there, to be determined by the procuring agency.
 - (g) **“Bid”** means a tender, offer, or a proposal submitted by a person, consultant, firm, company or an organization expressing his or its willingness to undertake a specified task at a price, in response to an invitation or request by a procuring agency;

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- (h) **“Bidding documents”** mean all documents provided to the interested bidders to allow them to prepare bids;
- (i) **“Bidder”** means a person or entity that submits a bid;
- (j) **“Conflict of Interest”** (COI) means
 - (i) In case of procurement of goods, works and services - where a contractor, supplier or consultant provides, or could provide, or could be perceived as providing, biased professional advice to a procuring agency to obtain an undue benefit for himself or those affiliated with him;
 - (ii) The receiving of any remuneration in connection with the assignment except as provided in the contract and any engagement in consulting or other activities that conflict with the interest of the procuring agency under the contract.
 - (iii) Where an official of the procuring agency engaged in the procurement process has a financial or economic interest in the outcome of the process of procurement, in a direct or an indirect manner.
- (k) **“Consultant”** means a professional who can study, design, organize, evaluate and manage projects or assess, evaluate and provide specialist advice or give technical assistance for making or drafting policies, institutional reforms, etc. and includes a wide variety of private and public entities, including consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, international and multinational organizations, investment and merchant banks, universities, research institutions, government agencies, nongovernmental organizations (NGOs), and individuals.
- (l) **“Consulting services”** means services of an advisory and intellectual nature provided by consultants using their professional skills to study, design, organize, and manage projects, encompass multiple activities and disciplines, including the crafting of sector policies and institutional reforms, specialist advice and integrated solutions, change management and financial advisory services, planning and engineering studies, and architectural design services, supervision, social and environmental assessments, technical assistance, and program implementation.
- (m) **“Contractor”** means a person, firm, company or organization that undertakes to execute works and services related thereto (other than consulting services) incidental to or required for the contract being undertaken for the works;

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- (n) **“Contract”** means an agreement enforceable by law;
- (o) **“Notice Inviting Tender”** means the first notice a procuring agency issues through publication in the newspapers or through electronic means with a purpose of inviting bids, or applications for pre-qualifications, or expression of interests and may be called Tender Notice, Invitation for Bids, Invitation for Pre-qualifications or Expression of Interests.
- (p) **“Corrupt and fraudulent practices”** mean either one or any combination of the practices given below;
- (i) **“Corrupt practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of another party to gain a wrongful gain;
- (ii) **“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;
- (iii) **“Collusive practice”** means any arrangement between two or more parties to the procurement process or contract execution, *designed to achieve any wrongful gain*;
- (iv) **“Coercive practice”** means any impairing or harming, or threatening to 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*;
- (v) **“Obstructive practice”** means 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 the Rules.
- (q) **“Emergency”** means natural calamities, disasters, accidents, internal disturbance, war and operational emergency which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person, property or the environment;
- (r) **“Lowest evaluated bid”** means a bid for goods, works and services thereto having the lowest evaluated cost among the substantially responsive bids, as defined in 2(w).

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- (s) **“Best evaluated bid”** means a bid for consulting services, which attains the highest combined weighted technical and financial score after technical and financial evaluation has been made, provided that the criteria for weighted scoring has already been given in an unambiguous manner in the bidding documents;
- (t) **“Bid with lowest evaluated cost”** means the bid quoting lowest cost amongst all those bids evaluated to be substantially responsive.
- (u) **“The lowest submitted price”** means the lowest costs submitted under a bid but which does not meet the minimum criteria required for being regarded as being substantially responsive and being the lowest evaluated bid.
- (v) **“Open competitive bidding”** means a fair and transparent specified procedure, advertised in a timely manner, leading to the award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both national and International competitive biddings;
- (w) **“Substantially responsive bid”** means the bid that contains no material differences or deviations from, or reservations to, the terms, conditions and specifications given in the bidding documents;
- (x) **“Blacklisting”** means debaring a bidder, contractor, consultant or supplier from participating in future procurement proceedings;
- (y) **“Supplier”** means a person, firm, company or an organization that undertakes to supply goods and services related thereto (other than consulting services) required for the contract; and
- (z) **“Best 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 agency’s requirements.
- (aa) **“National company or firm”** means any enterprise in which a firm or company of national origin has shares of 51 percent or more.
- (bb) **“Procuring Agency”** as defined in the Act.
- (cc) **“Goods, Works and Services”** as defined in the Act.
- (dd) **“Mis-procurement”** as defined in the Act.
- (ee) The expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Act and, if not defined there, as in the ordinary usage of language.

3. Scope and applicability. Save as otherwise provided, these rules shall apply to all procurements for goods, works and services including consultancy services, made by all procuring agencies of the Government of Sindh, including autonomous bodies, controlled by it, and the local governments or any other bodies corporate established under any law enacted by the provincial legislature.

4. Principles of procurements to prevent Fraud and Corruption. Procuring agencies shall ensure that procurements are conducted in a fair, transparent, efficient and economical manner, ensuring best value for money to the agency.

5. International and inter-governmental Commitments of the Sindh Government. Whenever these rules are inconsistent with, or in conflict with, any obligation or commitment of the Government of Sindh arising out of an international treaty or an agreement with a foreign country or countries, or any international financial institution, the provisions of such international treaty or agreement shall override the provisions of these Rules to the extent of the inconsistency.

6. Language.

(1) All communications and documentation related to procurements of the Government of Sindh shall either be in Urdu or English or Sindhi;

Provided that notice inviting tenders and notices for pre-qualifications, EoIs shall be issued in aforementioned three languages.

(2) In case of any dispute reference shall be made to the original documentation retained on record and decision shall be made in accordance with such original documentation.

7. Constituting a Procurement Committee. The procuring agency shall, with approval by its competent authority, constitute as many procuring committees, as it deems fit, each to be comprising of odd number of persons and be headed by a gazetted officer not below BPS-18, or if not available, the officer of the highest grade, and shall ensure that at least one third of the members of a procurement committee are from the agencies/departments other than the procuring agency. The procuring agency may co-opt one or more than one member from a government agency other than procuring agency, non-government organization or a professional body for seeking technical advice on the subject or with a view to ensuring transparency;

Provided that such a co-opted member(s) shall have no conflict of interest regarding the procurement of goods, works or services in the instant case.

8. Functions and Responsibilities. The procurement Committee(s) shall be responsible

- (a) for preparing bidding documents;
- (b) carrying out technical as well as financial evaluation of the bids;
- (c) preparing an evaluation report as provided in Rule 49;

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- (d) making recommendations for the award of contract to the competent authority;
- (e) perform any other function ancillary and incidental to the above.

9. Observance of Rules. A procurement committee shall ensure strict observance of these rules and regulations issued by the Authority from time to time in pursuance of these rules, while performing its functions.

MAINTENANCE OF RECORD AND FREEDOM OF INFORMATION

10. Record of procurement proceedings.

- (1) All procuring agencies shall maintain a record of their respective procurement proceedings along with all associated documentation for a minimum period of five years.
- (2) Such maintenance of record shall be subject to the regulations framed in this regard from time to time.

11. Public access and transparency. As soon as a contract has been awarded the procuring agency shall make all documents related to the evaluation of the bid and award of contract public through hoisting on the Authority's website as well as on procuring agency's website, if the procuring agency has such a website;

Provided that where the disclosure of any information related to the award of a contract where the procuring agency is convinced that such disclosure shall be against the public interest or may jeopardize national security, it can withhold only such information from public disclosure, subject to the prior approval of the Government.

Part II – PROCUREMENT OF GOODS, WORKS AND RELATED SERVICES

12. Applicability of Part II of the Rules. Subject to Part I and Part IV of the Rules, the provisions of Part II of the Rules shall apply only to procurement of goods, works and services related thereto, and shall not apply to consulting services.

PROCUREMENT PLANNING

13. Procurement plan.

(1) **Mandatory Provision of Procurement Plan.** Within one year of promulgation of these rules, all procuring agencies shall devise a mechanism for planning in detail for all proposed procurements, determining the requirement of the procuring agency, within its available resources, and prepare an annual or a longer term rolling plan, detailing the procurement methods applicable for specific procurements.

(2) **Review and update.** The procurement plan prepared for any project shall be reviewed and updated throughout the life of the project, such as estimates of time requirements, availability of funds, assumptions about institutional capacity, changing priorities and other factors that require plan adjustments for the success of the project. Such required adjustments will not invalidate the plan if made for improving the plan in the interests of the successful and timely completion of the project.

14. Limitation on splitting or regrouping of within the proposed procurement.

(1) Save as otherwise provided and subject to the regulations made by *the Authority*, a procuring agency shall prepare , in accordance with Rule 11 above, all proposed procurements for each financial year and shall proceed accordingly without any splitting or regrouping of the procurements already grouped, allocated and scheduled in the Procurement Plan.

(2) The annual or longer rolling plan, as the case may be, thus prepared, will be posted in advance on the Authority's website as well as on website of the procuring agency, in case the procuring agency has its own website.

15. Specifications.

(1) Standards and technical specifications shall be quoted in bidding documents and shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods, works or services under procurement.

- (2) As far as possible, the bidding documents shall specify recognized quality standards with which the equipment or materials or workmanship shall comply.
- (3) Use of Brand Name. Where it is necessary to use Brand names;
 - (a) specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” shall be added after such reference.
 - (b) the specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance equivalent to those specified.

16. Approval mechanism. All procuring agencies shall provide clear authorization and delegation of powers for different categories of procurement and shall only initiate procurements once approval of the competent authorities concerned has been accorded.

METHODS OF PROCUREMENT

17. Types of Bidding.

- (1) **Open Competitive Bidding.**- Open Competitive Bidding, is the most approved of method of bidding, as it seeks to ensure fairness, transparency and provide all interested bidders, whether national or international, with an equal opportunity to compete.
- (2) There are two types of open competitive bidding i.e International Competitive Bidding and National Competitive Bidding.
 - (a) **International competitive Bidding (ICB)**
 - (i) In ICB, bidding is open to all interested parties/firms/individuals, whether national or international, but subject to Rule 36.
 - (ii) ICB will be the default method of procurement for all procurements with an estimated cost equivalent to US \$ 10 Million or above.
 - (iii) A procuring agency may opt for ICB for procurements below the estimated cost equivalent to US \$ 10 Million if it is convinced that technological sophistication, technical expertise or professional capability of the satisfactory level is not available within the country and the best

value for money cannot be obtained, if competition is restricted to the domestic companies/firms/parties;

Provided that provisions of Rule 17 (2) (a) (iii) may be invoked only with prior approval of the competent authority.

(b) **National Competitive Bidding (NCB)**

(i) National competitive bidding (NCB) is the competitive bidding procedure in which bidding is open only to interested national firms/companies/parties and international firms/companies/parties are not invited for bidding.

(ii) NCB is the default method of procurement with an estimated cost below US \$ 10 Million or equivalent in PKR.

(iii) A procuring agency may opt for NCB for procurements with an estimated cost equivalent to US \$ 10 Million or above, where the procuring agency is convinced that it is the most economical and timely way of procuring goods, works or services which, by their nature or scope are unlikely to attract foreign competition;

Provided that the competent authority of the procuring agency, while making decision to opt for the NCB shall record reasons and justifications for its decision.

18. Alternate methods of procurements.

(1) Where international competitive or National competitive Bidding is not feasible, as explained below, a procuring agency may utilize the following alternative methods of procurement of goods, works and services (other than consulting services), namely:-

(a) **Limited international bidding (LIB)** is essentially ICB by direct invitation without open advertisement and may be used only where;

(i) there are only a limited number of potential bidders;

(ii) the amount of contract is not above US \$ 10 Million to attract foreign suppliers and contractors through ICB;

(iii) under LIB, procuring agencies seek bids from a wide list of potential suppliers to assure competitive prices, and where there are only a limited number of suppliers for the object, such list includes all the suppliers;

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(iv) domestic preferences are not applicable in the evaluation of bids under LIB. In all respects other than advertisement and preferences, ICB procedures shall apply, including the publication of the award of contract.

(b) **Request for Quotations.**

(i) Request for Quotation is a procurement method based on comparing price quotations obtained from several suppliers (in the case of goods) or from several contractors (in the case of civil works), or from several service providers (in the case of services other than consulting services), to assure competitive prices.

(ii) A procuring agency shall engage in this method of procurement only if the following conditions exist.-

- A) the cost of object of procurement is below the prescribed limit of one hundred thousand rupees and above the financial limit prescribed for petty purchase, as provided in sub-rule vi;
- B) the object of procurement has standard specifications;
- C) minimum of three quotations have been obtained; and
- D) the object of the procurement is purchased from the supplier offering the lowest price;
- E) requests for quotations shall indicate the description and quantity of the goods or specifications of works, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile or by electronic means.
- F) the evaluation of quotations shall follow the same principles as of open bidding. The terms of the accepted offer shall be incorporated in a purchase order or a brief contract.

(c) **Direct Contracting** is contracting with a single source, without competition and may be an appropriate method only under the following circumstances:

(i) additional quantities are required under an existing contract, which was awarded in accordance with ICB procedures or NCB;

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- (ii) standardization of equipment or spare parts, to be compatible with the existing equipment;
- (iii) the required equipment is proprietary and obtainable only from one source;
- (iv) the contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee;
- (v) where civil works are to be contracted and are a natural extension of an earlier or ongoing job and it can be shown that the engagement of the same contractor will be more economical and will ensure compatibility of results in terms of quality of work;
- (vi) where a change of supplier would oblige the procuring agency to acquire material having different technical specifications or characteristics and would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

Provided that the contract or contracts do not exceed three years in duration;

- (vii) when the price of good, work (and service related thereto) is fixed by Government or any other authority agency of body duly authorized by the Government, on its behalf;
- (viii) in exceptional cases of emergency;

Provided that the competent authority declares that a situation of emergency has arisen and reasons for making such a declaration shall be recorded in writing.

- (d) **Force account.** Construction by the use of the procuring agency's own personnel and equipment is known as force account and may be the only practical method for constructing some kinds of works. The use of force account may be justified where:

- (i) quantities of work involved cannot be defined in advance;
- (ii) works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (iii) work is required to be carried out without disrupting ongoing operations;

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(iv) there are emergencies needing prompt attention. The circumstances invoked to justify extreme urgency must, however, not be attributable to the procuring agency;

Provided that the competent authority declares that a situation of emergency has arisen and reasons for making such a declaration shall be recorded in writing.

- (e) **Petty purchases.** Procuring agencies may provide for petty purchases, where the object of the procurement is below the financial limit of twenty five thousand rupees. Such procurement shall be exempt from the requirements of bidding or quotation of prices;

Provided that procuring agencies shall ensure that the procurement of petty purchases is in conformity with the principles of procurement prescribed in Rule 4.

- (f) **Repeat Orders.** Where, after the items originally envisaged for the project have been procured through open competitive bidding, an additional quantity of the same items of goods or works is urgently needed to meet the requirements of the project, the additional items may be procured from the original contract or supplier;

Provided that;

(i) The additional goods or works do not exceed 15% of the original contract amount; and

(ii) The original supplier and contractor are willing to supply goods or carry out additional work on the same prices as, agreed in the original contract.

19. Principal method of procurement. Save as otherwise provided in the Rules, the procuring agencies shall use open competitive bidding as the principal method of procurement of goods, works and services, and ensure that they provide all interested bidders with timely and adequate notification of a procuring agency's requirements and an equal opportunity to bid for the required goods, works and services.

NOTIFICATION AND ADVERTISEMENTS

20. Methods of notification and advertisement.

(1) Procurements over Rupees one hundred thousand and up to Rupees one million shall be advertised by timely notifications on the Authority's website and may in print

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media in the manner and format specified by regulations issued by the Authority from time to time, or

If no such formats have been specified by the authority, in the manner and format, which conforms most closely to the principles of procurements i.e. openness of competition, fairness, transparency etc. and to procedural requirements given in these rules and regulations, issued in pursuance of these rules.

(2) The advertisement in the newspapers shall appear in at least three widely circulated leading dailies of English, Urdu and Sindhi languages.

(3) The notice inviting tender shall contain the following information:

- (a) name, postal address, telephone number(s), fax number, e-mail address of the procuring agency;
- (b) the purpose and scope of the project;
- (c) the scheduled of availability, of receiving back of bidding documents and of opening of bids also mentioning place at which bidding documents are issued, received back and will be opened;
- (d) amount and manner of payment of tender fee and bid security;
- (e) any other information that the procuring agency may deem appropriate to disseminate at this stage.

(4) In cases, the procuring agency has its own website it shall also post all advertisements concerning procurement on that website as well.

(5) A procuring agency utilizing electronic media shall ensure that the information posted on the website contains all the information mentioned in sub-Rule (3) above.

(6) In the case of international competitive bidding, the notice shall be advertised in two leading local English language newspapers in accordance with sub-Rules (1) (3) (4) and (5) above, and shall also be posted in English language on an internationally known website dedicated for the particular good, work or service.

21. Response time.

(1) The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract.

(2) Subject to sub-rule (1), the procuring agency shall ensure that not less than fifteen days from the date of the publication of bid in the newspaper, shall be allowed for

national competitive bidding and not less than forty five days from the date of the posting of Notice Inviting Tender on the website, as provided in rule 20(6), shall be allowed for international competitive bidding.

(3) Procuring Agency shall ensure that bidding documents are available to the interested bidders from the first day of publication in the newspapers.

22. Exceptions. Under following circumstances deviation from the requirements under Rule 20 and 21 is permissible with the prior approval of the competent authority:

(1) In cases of emergency, minimum time periods, specified in Rule 21, may be waived with approval of the competent authority and with reasons to be recorded in writing by such an authority;

(2) In cases of procurement related to national security, the requirement of advertisements and publication under Rule 18 may be waived, provided the competent authority declares beforehand that such a publication could jeopardize national security objectives;

(3) the requirement of advertisement and publication under Rule 20 may be waived in a case of procurement, if it relates to disclosure of information, which is proprietary in nature or falls within the definition of intellectual property which is available from a single source, provided that the approval of the competent authority has been sought beforehand and such an authority, while giving approval shall record its reasons in writing.

23. Provision of Bidding Documents.

(1) The procuring agency shall provide the bidding documents to all interested bidders in accordance with the procedures and requirements specified in the invitation to tender or notice for pre-qualification.

(2) The procuring agency may charge a reasonable fee for providing the bidding documents.

24. Contents of bidding Documents.

(1) The Bidding Documents shall include the following information:

- (a) letter of invitation for Bid;
- (b) data sheet containing information about the assignment;
- (c) instructions for preparing bids;
- (d) amount and manner of payment of Bid security and performance guarantee (where applicable);

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- (e) manner and place, date and time for submission of bidding documents;
- (f) manner, place, date and time of opening of bids;
- (g) method of procurement used;
- (h) a detailed and unambiguous evaluation criteria;
- (i) terms and conditions of the contract agreements, as far as already known by the procuring agency;
- (j) ToR/ technical specifications of goods, works or services to be procured, subject to Rule 13;
- (k) manner in which tender price is to be assessed and computed, including information about tax liability;
- (l) currency in which tender price is to be formulated and expressed;
- (m) bid validity period;
- (n) a copy of integrity pact to be signed by the parties (where applicable);
- (o) any other information which is specified in regulations to be issued by the Authority.

(2) In case the Authority has issued standard bidding documents (SBDs), such SBDs shall be used by the procuring agencies.

25. Extension of Submission Deadline.

- (1) The procuring agency may extend the deadline for submission of bids, if one or all of the following conditions exist;
- (a) fewer than three bids have been submitted and procurement committee is unanimous in its view that wider competition can be ensured by extending the deadline. In case, the bids submitted shall be returned to the Bidders un-opened.
 - (b) if the procuring agency is convinced that such extraordinary circumstances have arisen owing to law and order situation or a natural calamity etc. that the deadline should be extended.
 - (c) advertisement of such extension in time shall be done in a manner similar to the original advertisement.

26. Clarification and Modification of Bidding Documents.

(1) An interested bidder, who has obtained bidding documents, may request for clarification of contents of the bidding document in writing, and procuring agency shall

respond to such queries in writing within 24 hours, provided they are received at least three working days prior to the date of opening of bid;

Provided that any clarification in response to a query by any bidder shall be communicated to all parties who have obtained bidding documents.

(2) If a procuring agency is convinced that there is a material infirmity or ambiguity in the bidding documents, which cannot be addressed without modifying the contents of bidding documents, it shall re-issue the Notice Inviting Tenders/EoIs, in accordance with Rules 20 & 21.

27. Submission of Bids.

(1) Bids shall be submitted on the place, date and time and in the manner specified in the tender notice and bidding documents and no bid submitted late shall be considered by the procurement committee.

(2) Bidders shall be permitted to submit bids by mail or by hand.

28. Cancellation of Bidding Process.

(1) The procuring agency may reject all bids or proposals at any time prior to the acceptance of a bid or proposal. The procuring agency shall, upon request, communicate to any supplier or contractor who submitted a bid or proposal, the grounds for its rejection of all bids or proposals, but is not required to justify those grounds.

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

(3) Notice of the rejection of all bids or proposals shall be given promptly to all suppliers or contractors that submitted bids or proposals and bid security shall be returned along with such intimation.

29. Re-issuance of Tenders. The procuring agency may re-issue tenders in case, the bidding process has been cancelled, as provided in Rule 28, or, one of the following conditions exist:

(1) such an infirmity in the bidding documents has surfaced that the procuring committee recommends to the competent authority that the bids have to be invited afresh;

(2) the case has been declared as one of mis-procurement, in pursuance of Rule 60;

Provided while re-issuing tenders, the procuring agency may change the specifications and other contents of bidding documents, as deemed appropriate.

PRE-QUALIFICATION, QUALIFICATION AND DIS-QUALIFICATION OF SUPPLIERS AND CONTRACTORS

30. Pre-qualification of suppliers and contractors.

(1) A procuring agency, prior to the floating of tenders, invitation to proposals or offers in procurement proceedings, may engage in pre-qualification of bidders in the following cases:

- (a) in cases of contracts for large and complex works and services, or in any other circumstances in which there are high costs of preparing detailed bids;
- (b) in the contracts to be let under turnkey, design and build, or management contracting;
- (c) in case of innovative consulting assignments, of expensive and technically complex equipment and works with a view to ensuring that invitations to bid are extended only to those who have adequate capabilities, competence and resources.

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

- (a) experience and past performance on similar contracts;
- (b) capabilities with respect to construction or manufacturing facilities,
- (c) financial capability;
- (d) capabilities with respect to personnel, equipment, and plant;
- (e) appropriate managerial capability; and
- (f) any other relevant factor that is relevant to the capability, competence and resources required for accomplishment of the assignment;

Provided that pre-qualification may be carried out only for specific procurement contract and shall be applicable only to that particular contract.

31. Process of Pre-qualification.

(1) To prequalify for bidding on a specific contract or package:

- (a) The invitation to prequalify on specific contract or package shall be advertised and notified as per Rules 20 & 21.
- (b) The procuring agency shall provide a set of pre-qualification documents containing scope of contract and a clear set of requirements for

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qualification to any supplier, consultant or contractor, on request and subject to payment of price, if any, which shall not exceed the limit, as prescribed in the regulations to be issued by the Authority, and shall indicate the time and place where the documents can be obtained.

- (c) All applicants found capable of performing the work satisfactorily in accordance with the approved prequalification criteria shall be prequalified and invited to submit bids.
 - (d) Verification of the information provided by the shortlisted applicants in the submissions for prequalification may be made. In case the information is found to be wrong or incorrect in any material way or the applicant is found to be lacking in the capability or resources to successfully perform the contract, the application shall not be pre-qualified.
 - (e) The procuring agency shall promptly notify each and every applicant, whether or not it has been pre-qualified; and also make available to any person directly involved in the pre-qualification process, upon request, the names of all suppliers or contractors who have been pre-qualified.
 - (f) The procuring agency shall, on written request of the applicant(s) communicate to the applicant(s) the reasons for not pre-qualifying them, though it shall not be obliged to justify these reasons.
 - (g) Only suppliers or contractors who have been pre-qualified shall be entitled to participate further in the procurement proceedings.
- (2) The procuring agency, while engaging in pre-qualification, shall announce, in the pre-qualification documents;
- (a) all information required for pre-qualification, pertaining to the factors mentioned at sub-Rule 2 of Rule 30;
 - (b) instructions for preparation and submission of the pre-qualification documents;
 - (c) evaluation criteria;
 - (d) list of documentary evidence required from the applicants to demonstrate their respective qualifications;
 - (e) any other information that the procuring agency deems necessary for pre-qualification.

32. Eligibility. Firms and individuals, national or international, may be allowed to bid for any project where international competitive bidding is feasible. Any conditions for participation

shall be limited to those that are essential to ensure the bidder's capability to fulfill the contract in question.

- (1) Bidders may be excluded if;
 - (a) as a matter of law or official regulations, commercial relations are prohibited with the bidder's country by the federal government, or
 - (b) a firm is blacklisted/ debarred by the procuring agency and the matter has been reported to the Authority, subject to Rule 39.

- (2) Government-owned enterprises or institutions may participate only if they can establish that they are;
 - (a) legally and financially autonomous, and
 - (b) operate under commercial law.

Provided that where government-owned universities or research centers in the country are of a unique and exceptional nature, and their participation is critical to project implementation, they may be allowed to participate; and

For the purposes of Part II of the Rules, bidders shall include all those contractors or suppliers and providers of services related thereto that are registered or incorporated in Pakistan, irrespective of the nationality of their owners and of their professional staff.

33. Disqualification of suppliers and contractors.

- (1) The procuring agency shall disqualify a supplier or contractor, whether already pre-qualified or not, if it finds at any time, that the information submitted by him concerning his qualification and professional, technical, financial, legal or managerial competence as supplier or contractor, was false and materially inaccurate or incomplete, *or*,

- (2) At any stage has indulged in corrupt and fraudulent practices, as defined in these rules.

- (3) A supplier or contractor being aggrieved by the decision of the procuring agency regarding disqualification may seek relief through the mechanism of grievance redressal, as provided under Rule 34.

REDRESSAL OF GRIEVANCES AND SETTLEMENT OF DISPUTES

34. Mechanism for Redressal of Grievances.

(1) The procuring agency shall constitute a complaints' redressal committee comprising of odd number of persons, with appropriate powers and authorizations, to address the complaints of bidders that may occur prior to the entry into force of the procurement contract.

(2) The committee shall include an official of the procurement agency, at least one rank senior to the head of the procurement committee; District Accounts Officer in case of the local governments or provincial line departments at District level or a representative of the Auditor General Office in case of the provincial government departments at the provincial level; and an independent professional from the relevant field concerning the procurement process in question.

(3) Any bidder feeling aggrieved by any act or decision of the procuring agency after the submission of bid and prior to entry into force of the procurement contract, may lodge a written complaint no later than three days after the decision causing the grievance has been announced or no later than seven days after the announcement of the bid evaluation report under Rule 49.

(4) The committee, upon receipt of the complaint, shall investigate and decide upon the complaint within fifteen days. In case of failure to decide upon the complaint within stipulated time, for each day of delay, sufficient reasons for not deciding the complaint should be recorded.

(5) Mere fact of lodging of a complaint shall not warrant suspension of the procurement process, except for signing of the contract.

(6) The complainant, while lodging the complaint, shall deposit a fee in an account of the Authority which shall be equal to 0.5% of the contract price or Rs. 50,000/-, whichever is lesser.

(7) Any bidder not satisfied with the decision of the procuring agency's complaints' redressal committee, or with the decision to disqualify him under Rule 33, may lodge an appeal before the Authority, which shall refer the matter to a review panel, comprising odd number of persons, from among a panel of experts, constituted under sub-rule (8), within three days of the receipt of the appeal. The review panel shall hear the point of view of both the complainant and the procuring agency and give its recommendations to the Authority within fifteen days of receiving such an appeal. The Authority shall notify the decision, based on these recommendations, within 48 hours of receiving the recommendations of the panel of expert.

Provided that the Authority may refer the matter back to the panel of experts only if there is some ambiguity or vagueness in the recommendations and a clarification is to be sought. In that case the Authority shall refer the matter back to the review panel within 48 hours of receiving their recommendations, and the review panel shall clarify the matter within 48 hours, following which the Authority shall notify the decision, which shall be binding on all parties.

(8) The Authority shall constitute a panel of experts and professionals from various fields of expertise.

35. Remedial Actions to be taken by the Complaint Redressal Committee:

(1) Prohibiting the procurement committee from proceeding further in a case pending disposal before the complaint redressal committee, till the matter is finally decided or till further instructions during the pendency of the appeal;

(2) Prohibiting the procurement committee from acting or deciding in an unauthorized manner or from following incorrect procedure;

(3) Annuling, in whole or in part, any unauthorized act or decision of the procurement committee;

(4) Reversing a decision of the procurement committee or substituting its own decision for such a decision;

Provided that the complaint redressal committee shall not make any decision to award the contract.

36. Remedial Actions to be taken by the Review Panel. The Review panel, as provided under Rule 34 (8), may take the following remedial actions, unless the appeal is dismissed:

(1) Prohibiting the procuring agency from proceeding further in a case pending disposal before the panel, till the matter is finally decided or till further instructions during the pendency of the appeal;

(2) Prohibiting the procuring agency from acting or deciding in an unauthorized manner or from following incorrect procedure;

(3) Annuling, in whole or in part, any unauthorized act or decision of the procuring agency;

(4) Reversing a decision of the complaint redressal committee or substituting its own decision for such a decision;

Provided that the review panel shall not make any decision to award the contract.

37. Matters Not subject to Appeal or Review. The following shall not be subject to the appeal or review:

- (1) Selection method adopted by the procurement committee;
- (2) Decision by the procuring agency under Rule 28 to reject all tenders, proposals, offers under these rules.

38. Arbitration.

- (1) After coming into force of the procurement contracts, disputes between the parties to the contract shall be settled by arbitration.
- (2) The procuring agencies shall provide for a method of arbitration in the procurement contract, not inconsistent with the laws for the time being in force in Pakistan.

39. Blacklisting of suppliers and contractors.

- (1) The following shall result in blacklisting of suppliers, contractors, or consultant, individually or collectively, as part of consortium:
 - (a) Conviction for fraud, corruption, criminal misappropriation, theft, forgery, bribery or any other criminal offence;
 - (b) Involvement in corrupt and fraudulent practices while obtaining or attempting to obtain a procurement contract;
 - (c) Final decision by a court or tribunal of competent jurisdiction that the contractor or supplier is guilty of tax evasion;
 - (d) Willful failure to perform in accordance with the terms of one or more than one contract;
 - (e) Failure to remedy underperforming contracts, as identified by the procuring agency, where underperforming is due to the fault of the contractor or supplier.
- (2) The procuring agency may, on its own motion, or information provided by any party, carry out an investigation to determine, whether there is sufficient cause for blacklisting a contractor or supplier. If the procuring agency is satisfied that such a cause exists, it shall initiate the process of blacklisting in accordance with the procedure laid down in regulations to be issued by the Authority.
- (3) As a result of the scrutiny process, as mentioned above in sub-Rule 2, the procuring agency may take one of the following decisions:

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- (a) the contractor/consultant/supplier may be blacklisted;
- (b) the contractor/consultant/supplier may be debarred temporarily, specifying the time period.
- (c) the contractor may be blacklisted if he/they fail(s) to take the specified remedial actions within a specified time period.

Provided that the procuring agency shall duly publicize and communicate to the Authority, other Government departments and also hoist on its own website.

- (4) Any party being aggrieved by the decision of the procuring agency may submit an appeal to the Authority, which shall refer the matter to the review panel, as provided in Rule 34 (6) and (7) and the process provided in the said Rule shall be followed.
- (5) The Authority, on the basis of recommendations furnished by the review panel, may confirm, overrule or modify any decision taken by the procuring agency.
- (6) A party not satisfied with the decision by the review panel, may lodge an appeal in the court of competent jurisdiction.

40. Reservations and preference.

- (1) Procuring agencies shall allow all prospective bidders to participate in procuring procedure without regard to nationality, except in cases in which any procuring agency decides to limit such participation to national bidders only or prohibit participation of bidders of some nationalities, in accordance with these rules or policy of the Government;
- (2) Procuring agencies shall allow for a preference to domestic or national suppliers or contractors in accordance with the policies of the Government. The magnitude of price preference to be accorded shall be clearly mentioned in the bidding documents under the bid evaluation criteria.

41. Bid security.

- (1) The procuring agency may require the bidders to furnish a bid security not exceeding five *per cent* of the bid price, which shall remain valid for a period of four weeks beyond the validity period for the bids in order to provide the procuring agency reasonable time to act if the security is to be called.
- (2) Bid security shall be released to the unsuccessful bidders once the contract has been signed with the successful bidder.

42. Bid validity.

(1) A procuring agency, keeping in view the nature of the procurement, shall subject the bid to a bid validity period which shall be specified in the bidding document and shall not be more than 90 days in case of NCB and 120 days in case of ICB;

(2) The Bid validity period shall be of a duration that will be sufficient to enable the procuring agency to complete the comparison and evaluation of bids, make recommendation of award and obtain all the necessary approvals so that the contract can be awarded within that period.

(3) The procuring agency shall complete evaluation of the bids and award the contract within the initial period of bid validity so that extensions are not necessary.

(4) Extension of bid validity may be allowed only if justified by exceptional circumstances and subject to approval by the competent authority of the procuring agency, and with reasons to be recorded in writing;

Provided that if the validity period has to be extended due to some slackness on the part of procuring agency, the competent authority shall fix responsibility for such inordinate delay or slackness and appropriate disciplinary action shall be taken against the official(s) responsible for delay and slackness;

(5) Such an extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals, and award the contract and shall not be for more than one third of the original period of bid validity. In case the Procuring Agency fails to finalize the bid evaluation within the extended time then the bids shall stand cancelled and afresh bidding process shall be initiated.

(6) After obtaining such approval, the procuring agency, shall request in writing only those bidders who have submitted their bids, to extend the bid validity period. Such a request shall be made before the date of expiry of the original bid validity period.

(7) Whenever an extension of bid validity period is requested, the bidders shall have the right to refuse to grant such an extension and withdraw their bids and bid security shall be returned forthwith;

(8) Bidders who;

(a) agree to extension of the bid validity period shall also extend the validity of the bid bond or security for the agreed extended period of the bid validity;

(b) agree to the procuring agency's request for extension of bid validity period shall not be requested or be permitted to change the price or other conditions of their bids.

43. Performance Security.

- (1) Procuring Agency shall, in all procurement of goods, works and services, carried out through open competitive bidding, require security in an amount sufficient to protect the procuring agency in case of breach of contract by the contractor or supplier or consultant, provided that the amount shall not be more than 10% of the contract price;
- (2) The security shall be provided in an appropriate form and amount, as prescribed in regulations issued by the Authority;
- (3) Performance security shall extend sufficiently beyond the date of completion of the contract to cover the defects liability or maintenance period up to final acceptance by the procuring agency;

44. Force Majeure. The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract.

OPENING, EVALUATION AND REJECTION OF BIDS

45. Opening of bids.

- (1) The date for opening of bids and the last date for the submission of bids shall be the same, as given in the bidding documents and in the Notice Inviting Tender.
- (2) Subject to provisions of Rule 21, in case, the two dates are different, the date and time, given in the bidding documents shall apply.
- (3) The bids shall be opened within one hour of the deadline for submission of bids.
- (4) All bids shall be opened publicly in the presence of all the bidders, or their representatives, who may choose to be present in person, at the time and place announced in the invitation to bid.
- (5) The procuring agency shall read aloud the name of the bidder and total amount of each bid, and of any alternative bids if they have been requested or permitted, shall be read aloud and recorded when opened;
- (6) All bidders in attendance shall sign an attendance sheet.

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(7) All bids submitted after the time prescribed as well as those not opened and read out at bid opening, due to any procedural flaw, shall not be considered, and shall be returned without being opened.

(8) The official chairing DPC shall encircle the rates and all the members of DPC shall sign the each and every page of financial proposal.

(9) The DPC shall issue the minutes of the opening of the tenders and shall also mention any over writing or cutting, if any.

(10) For further details regulations may be referred to.

46. Evaluation of bids.

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

(2) For the purposes of comparison of bids quoted in different currencies, the 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 issue of notice for invitation of bids.

47. Clarification of bids.

(1) No bidder shall be allowed to alter or modify his bid(s) after the deadline for the receipt of the bids:

Provided that the procuring agency may ask the bidders for clarifications needed to evaluate the bids but shall not permit any bidder to change the substance or price of the bid.

(2) Any request for clarification in the bid, made by the procuring agency shall invariably be in writing. The response to such request shall also be in writing.

48. Discriminatory and difficult conditions. Save as otherwise provided, no procuring agency shall introduce any condition which discriminates among bidders. In ascertaining the discriminatory 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.

49. Announcement of evaluation reports. Procuring agencies shall announce the results of bid evaluation in the form of a report giving justification for acceptance or rejection of bids at least fifteen days prior to the award of contract.

50. Procedures of open competitive bidding. Save as otherwise provided in these rules the following procedures shall be permissible for open competitive bidding, namely:-

(1) Single Stage – One Envelope Procedure.

- (a) Each bid shall comprise one single envelope containing the financial proposal along with company profile containing but not limited to relevant experience, annual turn-over of last three years, Registration with Sales Tax and Income Tax Authorities.
- (b) All bids received shall be opened and evaluated in the manner prescribed in the NIT or bidding document.

(2) Single stage – two envelope procedure.

- (a) The bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;
- (b) The envelopes shall be marked as “FINANCIAL PROPOSAL” and “TECHNICAL PROPOSAL” in bold and legible letters to avoid confusion;
- (c) Initially, only the envelope marked “TECHNICAL PROPOSAL” shall be opened;
- (d) The envelope marked as “FINANCIAL PROPOSAL” shall be retained in the custody of the procuring agency without being opened;
- (e) The procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which does not conform to the specified requirements;
- (f) During the technical evaluation no amendments in the technical proposal shall be permitted;
- (h) The financial proposals of bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance;
- (i) After the evaluation and approval of the technical proposal the procuring agency, shall at a time within the bid/proposal validity period, publicly open the financial proposals of the technically accepted bids only. The

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financial proposal of bids found technically non-responsive shall be returned un-opened to the respective bidders; and

- (j) The bid found to be the lowest evaluated bid/ best evaluated bid shall be accepted.

(3) Two Stage Bidding Procedure.

(a) First stage;

(i) The bidders are invited to submit, according to the required specifications, a technical proposal without price, which shall be subject to technical as well as commercial clarifications and adjustments;

(ii) The technical proposal shall be evaluated in accordance with the specified evaluation criteria and may be discussed with all the bidders together regarding any technical features that may require technical as well as commercial clarifications and adjustments ;

(iii) After such discussions, all the bidders shall be permitted to revise their respective technical proposals to meet the requirements of the procuring agency;

(iv) The procuring agency may revise, delete, modify or add any aspect of the technical requirements or evaluation criteria, or it may add new requirements or criteria not inconsistent with these rules;

Provided that such revisions, deletions, modifications or additions are communicated to all the bidders equally at the time of invitation to submit final bids, and that sufficient time is allowed to the bidders to prepare their revised bids;

Provided further that such allowance of time shall not be less than fifteen days in the case of national competitive bidding and thirty days in the case of international competitive bidding;

(v) Those bidders not willing to conform their respective bids to the procuring agency's technical requirements may be allowed to withdraw from the bidding without forfeiture of their bid security.

(b) Second stage;

(i) The bidders are allowed to amend their technical proposals in order to ensure conformance to the same technical standards.

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(ii) The bidders submit the amended bidding documents and the submission of final technical proposals along with priced bids. Only the financial proposals including supplementary price proposals, of bidders whose original or revised technical proposals are found conforming to the agreed technical standards and requirements, shall be opened at a time, date and venue announced and communicated to the bidders in advance;

(iii) The revised technical proposals and the financial proposals shall be evaluated in the manner prescribed above. The bid found to be the lowest evaluated bid shall be accepted:

Provided that in setting the date for the submission of the revised technical proposal and financial proposal a procuring agency shall allow sufficient time to the bidders to incorporate the agreed upon changes in the technical proposal and prepare their financial proposals accordingly.

(4) Two Stage - Two Envelope Bidding Procedure.

(a) 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 agency without being opened;

(v) The technical proposal shall be discussed with all the bidders or their representatives present together with reference to the procuring agency’s technical requirements;

(vi) Those bidders willing to meet the requirements of the procuring agency shall be allowed to revise their technical proposals following these discussions;

(vii) Bidders not willing to conform their technical proposal to the revised requirements of the procuring agency shall be allowed to withdraw their respective bids without forfeiture of their bid security;

(b) **Second stage**

(i) After agreement between the procuring agency and the bidders or their representatives present all together 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 agency:

Provided that in setting the date for the submission of the revised technical proposal and supplementary price proposal a procuring agency 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 agency shall evaluate the whole proposal in accordance with the evaluation criteria and the bid found to be the lowest substantially responsive evaluated bid shall be accepted.

51. Conditions for use of various Procedures.

(1) **Single stage one envelope bidding procedure** shall ordinarily be the main open competitive bidding procedure used for simple and standard procurement packages.

(2) **Single stage two envelope bidding procedure** shall be used where the bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation;

(3) **Two stage bidding procedure** shall be adopted in large and complex contracts where technically unequal proposals are likely to be encountered or where the procuring agency is aware of its options in the market but, for a given set of performance requirements, there are two or more equally acceptable technical solutions available to the procuring agency; and

(4) **Two stage two envelope bidding procedure** shall be used for procurement where alternative technical proposals are possible.

ACCEPTANCE OF BIDS AND AWARD OF PROCUREMENT CONTRACTS

52. Acceptance of bids. Even when only one bid is submitted, the bidding process may be considered valid, if the bid was satisfactorily advertised and prices are reasonable in comparison to previous process or the market values.

53. Award of Contract. The bidder with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be awarded the procurement contract, within the original or extended period of bid validity.

54. Publication of the Award of Contract. Within three days of the award of contract, procuring agency shall publish on the website of the Authority and on its own website, if such a website exists, the results of the bidding process, identifying the bid and lot numbers, and the following information:

- (1) Name of each bidder who submitted a bid;
- (2) Bid prices as read out at bid opening;
- (3) Results of technical evaluation;
- (4) Name of bidders whose bids were rejected
- (5) Name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.

55. Debriefing. In the publication of contract award referred to in Rule 54 above, the procuring agency shall specify that any bidder who wishes to ascertain the grounds on which its bid was not selected, should request an explanation from the procuring agency, which shall promptly provide an explanation of why such bid was not selected, either in writing and/or in a debriefing meeting, at the option of the procuring agency. The requesting bidder shall bear all the costs of attending such a debriefing.

56. Bar on negotiations.

- (1) Where there is open competitive bidding in procurement of goods and works, no negotiations shall be held once the selection of the successful bidder has been made, in accordance with the selection method given in the bidding documents;
- (2) In case procurement of services, part III shall refer.

57. Confidentiality. The procuring agency 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 49.

58. On account payments. All procuring agencies shall make prompt payments to suppliers and contractors against their invoices or running bills within the time given in the conditions of the contract, and shall not exceed beyond thirty days.

59. Entry into force of the procurement contract. A procurement contract shall come into force;

- (1) where no formal signing of a contract is required, from the date the notice of 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 the time prescribed in the bidding documents; or
- (2) where the procuring agency requires signing of a written contract, from the date on which the signatures of both the procuring agency and the successful bidder are affixed to the written contract. Such affixing of signatures shall take place within the time prescribed in the bidding documents.

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.

60. Mis-procurement.

- (1) A procuring agency, on its own initiation or on receiving a complaint from any quarters, shall declare a case to be one of mis-procurement if any material violation of these rules or of any regulations or instructions, issued in pursuance of these rules, has occurred.

Provided that the procuring agency shall notify the competent forum for probing into such cases and declaring a case to be one of mis-procurement.

- (2) On declaration of mis-procurement, the procurement proceedings conducted so far shall be declared null and void, and the whole process shall be carried out afresh.
- (3) Responsibility for mis-procurement shall be fixed by the Administrative head of the procuring agency and the bidders and officials of the procuring agency, held responsible for the mis-procurement shall be proceeded against as per the relevant laws and rules.
- (4) Any bidder or official of the procuring agency, being aggrieved by the declaration of mis-procurement may seek relief through the process given in Rule 34 (3).

61. Closing of contract.

- (1) Except for defect liability or maintenance by the supplier, consultant or contractor, as specified in the conditions of contract, performance of the contract shall be deemed close on the issue of overall delivery certificate, certificate of completion of deliverables, or taking over certificate which shall be issued within thirty days of final taking over of goods or receiving the deliverables or completion of works enabling the supplier or contractor to submit final bill and the procuring agency to carry out any

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inspection of goods, works or services related thereto, as provided in the contract agreement and auditors to do substantial audit.

(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 supplier or contractor to submit the final bill.

(3) Except for unsettled claims, which shall be resolved through arbitration, the bill shall be paid within the time given in the conditions of contract, which shall not exceed forty five days to close the contract for final audit.

Part III – PROCURING CONSULTING SERVICES

62. Applicability of Part III of the Rules to Consulting Service. These rules only apply 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.

63. Short Consultancies. Short Consultancies are consultancies with a value under Rs. 0.5 million for Individual Consultants and Rs. 2.0 million for Consulting Firms. The duration of an assignment for an individual consultant shall not exceed six months;

Provided that duration of consultancy may be extended by the steering committee/Board of Directors in case projects/programs/autonomous/semi-autonomous bodies and Head of the Department (HoD) in case of Administrative Departments, DCOs in case of respective District Governments/TMAs/UCs, for a suitable period not exceeding one third of the original period.

64. Medium to Large Consultancies. Medium to Large Consultancies are consultancies with a value of Rs. 0.5 million or more for Individual Consultants and Rs. 2.0 million or more for Consulting Firms. Duration of medium-to-large assignments for individual consultants *shall not exceed twelve months*, unless specifically permitted by the Steering Committee/Board of Directors in case projects/programs/autonomous/semi-autonomous bodies and HoD in case of Administrative Departments, DCOs in case of respective District Governments/TMAs/UCs.

65. Selection of Consultancy Services - General Considerations. The procuring agency is responsible for preparing and implementing the project, and therefore for selecting the consultant, and awarding, and subsequently administering, the contract. While the specific rules and procedures to be followed for employing consultants depend on the circumstances of the particular case, five main considerations shall guide the selection process;

- (1) the need for high-quality services,
- (2) the need for economy and efficiency,
- (3) the need to give all qualified consultants an opportunity to compete in providing the services financed by the ,
- (4) the procuring agency’s interest in encouraging the development and use of national consultants without enabling any unfair competitive advantage, and
- (5) the need for transparency in the selection process.

66. Duties of the Consultants. Consultants shall provide professional, objective, and impartial advice at all times hold the procuring agency’s interests paramount, without any

consideration for future work, and that in providing advice they shall avoid conflicts with other assignments and their own corporate interests.

67. Bar on hiring in cases of Conflict of Interest. Without limitations on the generality of the foregoing, consultants shall not be hired under the circumstances set forth below:

(1) **Conflict of interest between consulting activities and procurement of goods, works or services (other than consulting services covered by these rules).**- Any firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services (other than consulting services under the original assignment) related to the project, resulting from or directly related to the firm's consulting services for such preparation or implementation of the project. Alternatively, any firm engaged by the procuring agency to provide goods, works or services (other than consulting services) related to the project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services to be procured.

(2) **Conflict among consulting assignments.** Neither consultants (including their personnel and sub-consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants.

(3) **Relationship with the procuring agency's staff.** Consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the procuring agency's staff (or of the project implementing agency's staff, or of a beneficiary of the funds) who are directly or indirectly involved in any part of:

- (a) the preparation of the TOR of the contract,
- (b) the selection process for such contract, or
- (c) supervision of such contract,

may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Procuring agency's throughout the selection process and the execution of the contract.

68. Hiring of Government Officials and Academics. Government officials and civil servants may be hired under consulting services contracts only if:

- (1) they are on leave of absence without pay;
- (2) they are not being hired by the agency they were working for, six months prior to going on leave; and
- (3) their employment would not give rise to any conflict of interest.

69. Equal Access to Information. The procurement agency shall make available to all the short-listed consultants, together with the request for proposals and subsequently, all information on an equal opportunity basis.

70. Declaration of Ineligibility. The procuring agency may sanction a firm or individual, including declaring it ineligible, either indefinitely or for a stated period of time, if it has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, as defined under Rule 2(p), while competing for, or executing a contract.

Provided such an action to bar a consultant or consulting firm, shall be duly publicized and communicated in writing to the Authority by the concerned procuring agency;

Provided further that any consultant who is to be blacklisted in such manner may seek relief under Rule 39 (4).

71. Rights and Obligations of the Client and Consultants. The rights and obligations of the procuring agency and the consultant are governed by General and Special conditions of contract signed between the Client and the consultant.

72. Procurement Plan.

(1) The procuring agency may agree to finance consulting services needed under a project by including them in their Agreement and in the project's Procurement Plan.

(2) The rights and obligations of the procuring agency and the consultant will be governed by the Request for Proposals (RFP) issued by the procuring agency and by the contract signed by the procuring agency with the consultant.

(3) The Procurement plan prepared by the procuring agencies shall ensure that:

- (a) The funds are used only for the purposes for which they are allocated;
- (b) Due attention is given to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.
- (c) The procurement plan arrangements include consulting services contracts, proposed selection methods, and the procuring agency's review procedures.
- (d) The related review procedures in the plan shall ensure that the procuring agency will update the procurement plan annually, or as needed, throughout the duration of the project.

73. Steps in the Selection Process. Depending on the selection method adopted, the procuring agency shall include, among others, the following steps:

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- (1) Preparation of the TOR of the assignment;
- (2) Preparation of the cost estimate or budget of the assignment;
- (3) Public advertisement of invitation of consultants' expressions of interest (EOIs);
- (4) Short-listing of consultants;
- (5) Preparation and issuance of the RFP to the shortlisted consultants;
- (6) Preparation and submission of proposals by consultants;
- (6) Evaluation of technical proposals – quality evaluation; and
- (7) Opening and evaluation of financial proposals – cost evaluation;
- (9) Combined quality and cost evaluation to select the winning Proposal, as provided in the selection method, adopted by the Procuring Agency;
- (10) Contract negotiations, as provided in the selection method, award and signing of the contract between the procuring agency and the consultants.

74. Advertising. All consulting assignments shall be Advertised or Announced in accordance with provisions of Rule 20 and Rule 21 above.

75. Criteria for Evaluation of the Quality of Consulting Services.

- (1) **Evaluation of the Consultants.** Evaluation criteria shall include, but not be limited, to the following:
 - (a) **Specialization:** the consultants' specialized skills and access to particular technologies related to the assignment.
 - (b) **Experience:** The consultants' experience of working on the similar assignment.
 - (c) **Financial Capability:** Financial capability of the consulting firms may be evaluated with a view to ensuring that they can complete the assigned task in a timely manner.
 - (d) **Understanding of the assignment:** The consultant's understanding of the assignment is a very important consideration for evaluation.
 - (e) **Proposed Methodology.** The Methodology proposed by the consultants shall be evaluated for its innovativeness and soundness.

- (f) **Quality Management (QM):** The availability of a well-established QM system may be taken into account for large and complex assignments.

(2) **Evaluation of the Methodology and Work Plan submitted by Consultants.** The Evaluation Committee set up for rating the quality and the adequacy of the proposed methodology and work plan submitted by the bidders should consider the technical approach and methodology adopted, work plan submitted, and the organization and staffing of the consultants,

76. Quality Management Plan of the Consultant(s). Consultants shall also provide a Quality Management Plan (QMP), or quality assurance, designating all planning, preparation, work, checking, and measuring activities necessary to achieve desired standards of service, which shall not be considered additional or optional, but shall be an integral part of the consulting services required.

77. Association between Consultants. An association of consultants can take either the form of a joint venture or a subcontract (sub-consultancy). Under a joint venture, all members, if awarded the contract, shall individually sign and be jointly and severally liable for the entire assignment. Such an association may be known as a “consortium”, “association” or “joint venture.” The procuring agency must ensure that the firms are jointly and severally liable for the assignment.

78. Sub-Consultancy. The main consultant can engage another consultant for performing part of an assignment, only if expressly provided in the Contract Agreement and expressly agreed to by the Client. The main consultant shall, however, bear all responsibility for quality of the output and in all other respects as provided in the main contract.

79. Intellectual Property Rights.

(1) All documents, reports, designs, research work and all deliverables prepared by the consultant shall become and remain the property of the procuring agency. The consultant may retain a copy of such documents and software.

(2) Any restrictions on the future use of these documents and software by the consultant and the procuring agency should be specified in the conditions of the contract.

80. Consultant Selection Committee (CSC). Every procuring agency, for the selection of consultants, shall set up a CSC, which shall consist of the following:

(1) Administrative Secretaries for the Administrative Departments, Chief Executive for Autonomous Bodies/ Universities* or other similar organizations and the Project Director for Project Management Units or Project Management Offices shall be the Chairpersons.

(2) **Members;**

- (a) Nominee of the P&D Department not below BS-19;
- (b) Nominee of the Finance Department not below BS-19;
- (c) A representative of the Procuring Agency not below BS-18 to act as member/secretary;
- (d) At least two members from civil society having the professional background in the relevant field;
- (e) One technical member from the concerned department (C&W, HUD&PHE, I&P) for consultation having adequate experience in the relevant field not below BS-19 or equivalent;
- (f) Co-opted Member(s) – The CSC, with approval of its Chairperson, can co-opt up to two members, having adequate technical knowledge and experience in the relevant field, for assistance in a given assignment that requires technical input.

81. Quorum. Three members, including the CSC Chairman and representatives of the Finance Department and at least one private member, shall form the quorum for conducting the business of the CSC.

82. CSC for District Governments (DGs) and Town Municipal Administrations (TMAs). In case of DGs and TMAs, the Executive District Officer of the concerned Department shall head the CSC, with the following members:

- (1) EDO Finance & Planning or DO, as his representative;
- (2) DO of the concerned procuring department as member/ secretary;
- (3) The CSC, with approval of its Chairperson, may co-opt up to two members, having adequate technical knowledge and experience in the relevant field, for assistance in a given assignment that requires technical input;;
- (4) Concerned TMO (in case of TMA)
- (5) At least two members from civil society having the professional background in the relevant field;

Provided that the co-opted members shall have no conflict of interest in the procurement process.

83. Decision by Simple Majority. All decision of the CSC shall be made by simple majority.

84. Functions and Responsibilities of CSC. The CSC shall perform the following functions:

- (1) Short listing of consultants, responding to the EOIs, where applicable, in accordance with the criteria mentioned in EOI;
- (2) Approval of Request For Proposal (RFP) before issuance;
- (3) Evaluation of Technical and Financial Proposals, according to the selection method and evaluation criteria, mentioned in the RFP, and in accordance with the provision of these Rules ;
- (4) Finalization of recommendation for selection of consultants, based on evaluation as mentioned at sub-rule (3).

85. Short listing of Consultants.

- (1) The Procuring agency may shortlist the consultant(s), and while preparing the short list, must-
 - (a) review the qualifications of each of the consultants,
 - (b) determine any conflict of interest that may afflict the consultant,
 - (c) make an informed decision about its eligibility for the short listing.
- (2) Where a qualified consultant is found to have a conflict of interest, before deciding its exclusion, the procuring agency shall properly determine the conflict, its nature, and the possible extent of damage it could cause.
- (3) The qualified consultant has a duty to disclose any conflict of interest it has, or may have, and explain to the procuring agency clearly how it intends to deal with the COI.
- (4) The final decision on whether to exclude or admit the consultant to the short list shall be made by the CSC constituted by the procuring agency.

86. Methods of Selection. There are several methods of selection of consultants, which include:

- (1) **Quality and Cost-based selection (QCBS).**
 - (a) Quality and Cost-Based Selection (QCBS) is a method based on the quality of the proposals and the cost of the services offered.

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- (b) It is the method most frequently used to select consultants, because the cost of the proposed services is a factor of selection and this method is appropriate when.-
 - (i) the type of service required is common and not too complex;
 - (ii) the scope of work of the assignment can be precisely defined and the TOR are clear and well specified;
 - (iii) the Procuring agency and the consultants can estimate with reasonable precision the staff time, the assignment duration, and the other inputs and costs required of the consultants;
 - (iv) the risk of undesired downstream impacts is quantifiable and manageable; and
 - (v) the capacity-building program is not too ambitious and easy to estimate in duration and staff time effort.

(2) **Quality-Based Selection (QBS).**

- (a) Quality-Based Selection (QBS) is based on the evaluation of the quality of technical proposal without any initial consideration for cost. The consultant that submits the highest-ranked technical proposal is then invited to negotiate its financial proposal and the contract.
- (b) QBS is appropriate when -
 - (i) the downstream impact of the assignment can be so large that the quality of the services is of overriding importance for the success of the project as a whole;
 - (ii) the scope of work, the duration of the assignment; and
 - (iii) the TOR require a degree of flexibility because of the novelty or complexity of the assignment, the need to select among innovative solutions, or the particular physical, environmental, social, or political circumstances of the project and of the procuring agency;
 - (iv) the assignment itself can be carried out in substantially different ways such that cost proposals may not be easily or necessarily comparable;
 - (v) the introduction of cost as a factor of selection makes competition unfair; or

(vi) the need exists for an extensive and complex capacity building program.

(3) **Fixed Budget Selection (FBS).**

- (a) Selection under a Fixed Budget (FBS) is based on the disclosure in the RFP of the available budget to invited consultants and selecting the consultant with the highest-ranking technical proposal within that budget. Because consultants are subject to a cost constraint, they must adapt the scope and quality of their services to that budget.
- (b) The Procuring agency shall, therefore, ensure that the budget is compatible with the TOR and that consultants will be able to perform the tasks within the budget. FBS is appropriate only when -
 - (i) the budget cannot be exceeded;
 - (ii) the objective and the TOR, including the scope of work, are very precisely defined;
 - (iii) the time, financial resources and person months required from the consultants can be assessed with precision; and
 - (iv) capacity building is limited to a simple transfer of knowledge that can be very easily estimated.

(4) **Design Contest.** For projects, that have an aesthetic component that has to be taken into account, Design Contest (DC) is the most appropriate selection method with procedures very similar to those of QBS, under which a procuring agency invites consultants to present a plan or design for a project based on a concept or criteria provided by the procuring agency. The winner is selected by an Evaluation Committee based on the quality of the presentation.

(5) **Selection based on Consultant's Qualifications (CQS).**

- (a) The Selection Based on Consultant's Qualifications (CQS) method applies to small assignments for which the cost of a full-fledged selection process would not be justified.
- (b) Selection under CQS may be made only for short term consultancies.-

(6) **Single-Source Selection (SSS).**

- (a) Single-Source Selection (SSS) is to be adopted only in exceptional cases when competition appears unlikely to be of use and a consultant is already identified as having the requisite qualifications and possesses a particular experience or expertise that is useful for the assignment,

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- (b) This method may be adopted only when .
 - (i) The assignment is of short term consultancy;
 - (ii) the assignment represents a natural or direct continuation of a previous one awarded competitively and the performance of the incumbent consultant has been of good quality; or
 - (iii) the procuring agency is convinced that only one consultant/consulting organization has the qualifications and experience required to carry out the assignment;

Provided that SSS can only be resorted to with approval of the competent authority of the procuring agency and with reasons to be recorded in writing;

(7) Selection Process of Individual Consultants.

- (a) Individual consultants may not be required to submit proposals, and shall be selected based on their qualifications for the assignment.
- (b) 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.
- (c) An individual consultant may be selected on a single-source basis (with due justification) in exceptional cases; such as the following:
 - (i) for a task that is a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively,
 - (ii) in an emergency situation resulting from a natural disaster, and
 - (iii) when the individual is the only consultant qualified for the assignment.
- (d) 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.

87. The Request for Proposals (RFP). The RFP can be adapted to apply to any of the selection methods described in the rules. The RFP includes the following sections:

- (1) Section 1: Letter of Invitation (LOI)
- (2) Section 2: Instructions to Consultants (ITC) (including the Data Sheet)
- (3) Section 3: Technical Proposal—Standard Forms
- (4) Section 4: Financial Proposal—Standard Forms (including the appendix on breakdown of remuneration rates)
- (5) Section 5: Terms of Reference
- (6) Section 6: Standard Form of Contract (including General Conditions of Contract [GCC], Special Conditions of Contract [SCC], and Appendixes).

88. Areas of Contract Negotiation.

- (1) Depending on the selection method and proposed type of contract, technical and financial items that may be negotiated within the limits indicated, include the following:
 - (a) Scope of work
 - (b) Technical approach and methodology
 - (c) Work plan and activity schedule
 - (d) Organization and staffing, plus time schedule for key staff
 - (e) Deliverables
 - (f) Counterpart staff
 - (g) Counterpart facilities and equipment
 - (h) Contract special conditions
 - (i) Staff unit rates
 - (j) Reimbursable expenses
 - (k) Proposed contract price

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(2) Unless the consultant contract is tax-exempt, during negotiations local tax liabilities on the contract or on contract items are a subject of clarification between the procuring agency and the consultant, and adequate provisions must be made for them in the contract.

89. Overriding effect. The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any other rules concerning public procurements:

Provided that all previously existing rules and procedures will remain applicable only for the procurement of goods, works and services, for which notice for invitation of bids had been issued prior to the commencement of these rules unless the procuring agency deems it appropriate to reissue the notice for the said procurement after commencement of these rules.